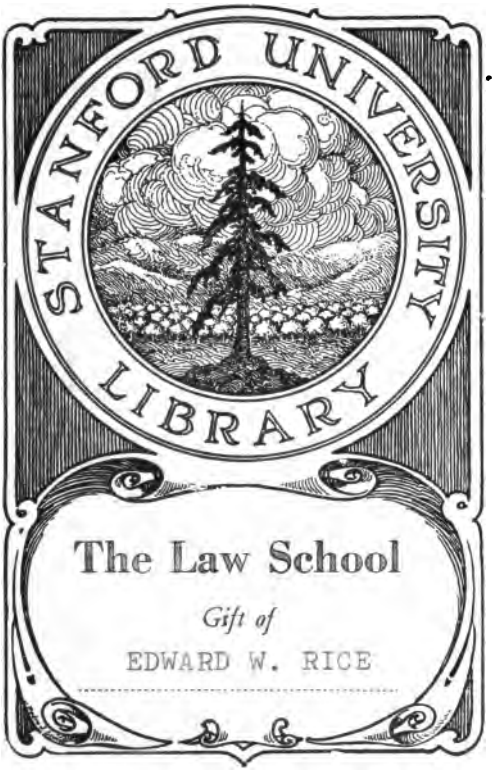
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THE

LAW

OF

BILLS OF EXCHANGE,

PROMISSORY NOTES,

CHECKS, &c.

BY

CUTHBERT W. JOHNSON, ESQ.
OF GRAY'S INN, BARRISTER AT LAW.

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PREFACE.

In this work I have endeavoured to include, in as brief limits as possible, every case of importance, and principal point worthy of notice, in the law of Bills of Exchange. I have paid no attention to any other objects, but conciseness and usefulness; and have spared no pains to make it accurate. With these views I submit this compendium of authorities to the profession, and beg to request for it a favourable consideration. For any criticisms, or suggestions for its improvement, I shall be grateful, and will gladly avail myself of them in any future edition to which it may have the good fortune to attain.

14. *Gray's Inn Square,*
August, 1837.

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ABBREVIATIONS.

Adolp. & E.	Adolphus & Ellis's Reports.
Ambler.	Ambler's Reports.
Anstruther.	Anstruther's Reports.
B. & Ald.	Barnewall & Alderson's Reports.
B. & Adolp.	Barnewall & Adolphus's Reports.
B. & C.	Barnewall & Cresswell's Reports.
Binghams.	Bingham's Reports.
Bligh.	Bligh's Reports.
B. & P.	Bosanquet & Puller's Reports.
B. & B.	Broderip & Bingham's Reports.
Bro. C. C.	Browne's Chancery Cases.
Bro. P. C.	——— Parliamentary Cases.
Burrows.	Burrow's Reports.
C. & J.	Crompton & Jervis's Reports.
C. & M.	Crompton & Meeson's Reports.
C. M. & R.	Crompton, Meeson & Roscoe's Reports.
C. & P.	Carrington & Payne's Reports.
C. & Fin.	Clarke & Finnely's Reports.
Chitty.	Chitty's Reports.
Cowper.	Cowper's Reports.
Douglas.	Douglas's Reports.
Dow.	Dow's Reports.
Dow & Clark.	Dow & Clarke's Reports.
Dowling, P. C.	Dowling's Practice Cases.
D. & R.	Dowling & Ryland's Reports.
D. & R. N. P. C.	——— Nisi Prius Reports.
Dyer.	Dyer's Reports.
East.	East's Reports.
Espinasse.	Espinasse's Reports.
G. & J.	Glyn & Jamieson's Reports.
Gow.	Gow's Reports.
H. Black.	Henry Blackstone's Reports.
Hobart.	Hobart's Reports.
Holt.	Holt's Reports.
Kebble.	Kebble's Reports.
Kenyon.	Lord Kenyon's Cases.
Leach, C. C.	Leach's Crown Cases.
Levinz.	Levinz's Reports.

Llofft.	Llofft's Reports.
Lutwyche.	Lutwyche's Reports.
Maddock.	Maddock's Reports.
Marshall.	Marshall's Reports.
M. & A.	Montague & Ayrton's Reports.
M. & M.	Moody & Malkin's Reports.
M. & R.	Manning & Ryland's Reports.
M. & Rob.	Manning & Robinson's Reports.
M. & P.	Moore & Payne's Reports.
M. & S.	Maule & Selwyn's Reports.
M. & Scott.	Moore & Scott's Reports.
Mees. & Wels.	Meeson & Welsby's Reports.
Moor.	Moor's Reports.
Moores.	J. B. Moore's Reports.
New Reports.	Bosanquet & Puller's New Reports.
Nev. & Man.	Neville & Manning's Reports.
Nolan.	Nolan's Reports.
Peake.	Peake's Reports.
Price.	Price's Reports.
P. W.	Peer Williams's Reports.
Rose.	Rose's Reports.
Russell.	Russell's Reports.
R. & Mylne.	Russell & Mylne's Reports.
Ry. & Moo.	Ryan & Moody's Reports.
Russel C. M.	Russell on Crimes & Misdemeanours.
R. & M. C. C.	Ryan & Moody's Crown Cases.
R. & R. C. C.	Russell & Ryan's Crown Cases.
Scott.	Scott's Reports.
Smith.	Smith's Reports.
Starkie.	Starkie's Reports.
Swanston.	Swanston's Reports.
Saunton.	Taunton's Reports.
T. R.	Durnford & East's Term Reports.
Tyrwhitt.	Tyrwhitt's Reports.
T. & G.	Tyrwhitt & Grainger's Reports.
Vesey J.	Vesey Junior's Reports.
Ves. & B.	Vesey & Beame's Reports.
Wightwick.	Wightwick's Reports.
Wilson.	Wilson's Reports.
W. Black.	Sir W. Blackstone's Reports.
Y. & Jer.	Younge & Jervis's Reports.
Younge.	Younge's Reports.
Y. & Col.	Younge & Collyer's Reports.

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ADDENDA.

SINCE the last sheet of this work was printed, the Act of the 1 Victoria, c. 80. has very wisely still further extended the exemption of Bills of Exchange from the operation of the usury laws. On Bills of Exchange of not more than twelve months duration, any rate of interest or discount may now be taken; this Act merely extends the exemption which was granted by the 3 & 4 W. 4. c. 98. s. 7. to bills of three months date.

1° VICTORIÆ, c. 80. 1837.

"An Act to exempt certain Bills of Exchange and Promissory Notes from the Operation of the Laws relating to Usury."

"Whereas by an Act passed in the fourth year of the reign of his Majesty King William the Fourth, intituled 'An Act for giving to the Corporation of the Governor and Company of the Bank of England certain Privileges for a limited Period under certain Conditions,' bills of exchange and promissory notes made payable at or within three months after the date thereof, or not having more than three months to run, and certain transactions in respect of such bills, were exempted from the operations of the statutes relating to usury; and it is desirable to extend such exemptions: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, That from and after the passing of this act, and till the first of January, 1840, no bill of exchange or promissory note made payable at or within twelve months after the date thereof, or not having more than twelve months to run, shall by reason of any interest taken thereon or secured thereby, or any agreement to pay or receive or allow interest in discounting, negociating, or transferring the same, be void, nor shall the liability of any party to any bill of exchange or promissory note be affected, by reason of any statute or

4 W. 4. c. 98.

Bills of exchange payable at or within twelve months not to be liable to the laws for the prevention of usury.

law in force for the prevention of usury; nor shall any person or persons or body corporate drawing, accepting, indorsing, or signing any such bill or note, or lending or advancing any money, or taking more than the present rate of legal interest in Great Britain and Ireland respectively for the loan of money, on any such bill or note, be subject to any penalties under any statute or law relating to usury, or any other penalty or forfeiture; any thing in any law or statute relating to usury, or any other law whatsoever in force in any part of the United Kingdom, to the contrary notwithstanding."

ERRATUM.

Page 24. line 6. from the bottom, *for* "drawer," *read* "drawee."

CHAPTER I.

THE HISTORY OF BILLS OF EXCHANGE, DRAFTS, ETC.

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HISTORY OF BILLS OF EXCHANGE.

THE origin of Bills of Exchange*, Drafts, &c. must, in the most extended sense, have been nearly coeval with the invention, or at least with the general employment of writing; for a written request from a creditor to a debtor to pay the bearer so many pieces of silver or gold, or even so many sheep or bullocks, which are the standard of value among many rude nations, would constitute a Draft, payable at sight. And if the debtor was desired to pay the bearer at some future date, as after an approaching fixed festival, fair, or market day, that would be an order payable so many days after date.

* From "Billet de Change."

Such simple modes of transferring personal property must have been in use from the earliest periods, when men began to dwell together under any degree of civilisation, and were doubtlessly of a much earlier origin than the date commonly assigned to them.

It is generally said that the Jews of Lombardy, or other great Italian dealers in money, who in the dark ages were the almost exclusive bankers of Europe, were the inventors of Bills of Exchange; and that necessity was also the parent of this scheme, since the difficulty and danger of transferring money to any distance in the precious metals, was in those days extremely hazardous; more especially if the owner happened to be a Jew.

In that iron age an Israelite was supposed to have no legal title to his property, but that he came by it with the assistance of Satan, and a poor despoiled Jew had, in consequence, no court of justice to appeal to. His judges, who were generally monks or other ecclesiastics, considering that to take gold from a priest was the greatest of crimes, but that to rob the Israelite of his money was an action acceptable even to the Supreme Being.

Bills of Exchange, therefore, were probably very early extensively and gladly employed by those celebrated Lombard merchants, whose name is yet retained by a street in London, almost sacred to bankers and other dealers in money. A Venetian Law of the 14th century expressly mentions Bills of Exchange, and according to the 4 *Modern Universal Hist.* 499, paper money was introduced into China a century earlier. The following monkish legend, which, with all gravity, the celebrated Cardinal Baronius inserted nearly three centuries since, in his Ecclesiastical History, has been adduced as a proof that Bills of Exchange were employed so early as the fourth century.

The philosopher Synesius, afterwards bishop of Ptolemais, about 410, having converted a pagan philosopher, Evagrius of Cyrene, to Christianity, the convert soon afterwards brought to Synesius three hundred pieces of gold for the poor, requesting a Bill, under his hand, that Christ should repay it him in another world, with which Synesius complied; and not long after, Evagrius being about to die, he directed this bill to be deposited in his coffin.

Soon after his death, he appeared in a vision to his friend the bishop, and told him to come to his grave and take his Bill, which upon Synesius doing, he found his Bill in the hand of the corpse, with this receipt written upon it: —

"I, Evagrius the Philosopher, salute thee, most holy Bishop Synesius. I have received the debt which in this paper is written with thy own hand-writing. I am satisfied, and have no lawful claim for the gold which I gave to thee, and by thee to Christ, our God and Saviour."

Good Richard Baxter, when commenting upon this marvellous story, which he evidently believed, very gravely remarks: "If any be causelessly incredulous, there are surer arguments which we have ready at hand to convince him by." — Cross of Christ. *Preface.*

The old Bills of Exchange bore little resemblance in their form to the brief yet expressive Bills and Promissory Notes of modern days. Richard Arnolde, who died about the year 1521, gives in his Chronicle, fol. 106—118, edit. 1811, the following form of the Promissory Notes and Foreign Bills of Exchange employed in his time.

PROMISSORY NOTE.

Md'. — That this Byll, made the VIII Day of February in the XVIII yere of the reign of Kyng E. the IIII. berith Witness, that we, R. Shirldy of London, Grocer, and T. S. of London, Haburd'. owen unto W. W. of London, Haburd. liij. iiij. d' st. to be payd to the sayd W. or to his certain Attornay att y^e^ Feste of Mydsomer next comynge without any delay. To the which paymet wel and truly to be made, we binde us our eyers and our Executours, and eche of us in the hole. In wytnesse whereof we set to our Seales, the Day and tyme before rehersyed.

BILL OF EXCHANGE.

Be it knowen to all M^e^. y^t^ I, R. A. Citezen and Habd'. of London, have ress'. by Exchange of N. A. Mercer of the same Cite XX. li. St.] whiche twenty Ponde St. to be payd to the sayd N. or to the Bringer of this Byll, in Synxten Marte next comyng, for VI. 's. viij. d' st]. IX. s. iiij. g. fll.] Money Currant in the sayd Marte; and yf ony defaut of payement be at the Day in alle or ony part y^e^rof, that I promyse to make good all Costes and scathes that may growe therby for defaute of payement, and hereto I bynde me myn Executours and all my Goodis wheresoever they may be founde, in Wytnesse whereof I have written and sealyed this Byll, the X Day of Marche A° Dni. MCCCC. &c.

The first reported trials in our courts upon a Bill of Exchange, in which it was held that an assumpsit lay upon them, are those (A. D. 1602.) of Martin *v.* Boure, Cro. Jac. 6.; and Oaste *v.* Taylor, Cro. Jac. 306.

It was with evident reluctance, however, that the courts thus authorised the transfer of the right to a chose in action (or right not in possession), they especially restrained even this authority to Foreign Bills of Exchange. Fairley *v.* Roch (1686), 1 Lutw. 891.

Guided, however, by the custom of merchants, they soon extended this doctrine to Inland Bills drawn between traders; and finally, they considered a Bill of Exchange or Promissory Note of itself evidence of trading according to the custom of merchants. — Bromwich *v.* Lloyd(1696), 2 Lutw. 582. "For," said Treby C. J., "Bills of Exchange are for the general use and benefit."

Promissory Notes were still longer exposed to the bitter opposition of the courts; they were the last members of the family reluctantly recognised in Westminster Hall.

In Clark *v.* Morton, 2 Lord Raym. 758. (1702), the celebrated C. J. Holt was decidedly against them. He observed that "This note could not be a Bill of Exchange; that the maintaining of these actions upon such notes, were innovations of the

rules of the common law, and that it amounted to the setting up a new kind of specialty unknown to the common law, and invented in Lombard street, which attempted in these matters of Bills of Exchange to give laws to Westminster Hall: that the continuing to declare upon these notes, upon the custom of merchants, proceeded from obstinacy and opinionativeness, since he had always expressed his opinion against them, and since there was so easy a method as to declare upon a general indebitatus assumpsit for money lent, &c."

In spite, however, of the opposition of the courts, Promissory Notes still continued to be more and more employed, until at length the Act of the 3 and 4 Ann, c. 9. (1704) made perpetual by the 7 Ann, c. 25. (1708), declared that a holder of a Promissory Note "shall and may maintain an action for the same, in such manner as &c. upon any inland Bill of Exchange."

The legislature has never since forgotten steadily to encourage the custom of merchants with regard to these negotiable securities. Thus, by the Stamp Act, the 5 William and Mary, c. 21. s. 5. (1694), Bills of Exchange were expressly declared to be legal, without being stamped.

By 9 and 10 William III. c. xvii. (1698), the holders of Inland Bills were desired, in cases of non-payment, to protest them within three days of their becoming due, and the form of the protest is given.

By the 3 and 4 of Ann, c. 9. (1704), made perpetual by the 7 Ann, c. 25. (1708), Promissory Notes were declared to be assignable in the same manner as Bills of Exchange, "to the intent to encourage trade and commerce," and directs that Bills refused acceptance shall be protested, but that no protest shall be necessary, either for non-payment or non-acceptance, unless the amount shall be for £20. or upwards, and for "value received."

At last (in 1833), by the 3 and 4 W. IV. c. 68. s. 7., Bills of Exchange and Promissory Notes not having more than three months to run, were exempted from the penalties attached to usury.

Such has been the slow though steady progress of Bills of Exchange; a march so quiet, that it is impossible to mark the different stages of their introduction with even tolerable exactness. They are confined to no set form of words or class of persons; are unrestrained as to their duration, except by the will of the maker, and until the 22 G. III. c. 33. (1782) did not even require the formality of a stamp.

The legislature and the courts of Westminster, instead of directing the law of Bills of Exchange, have wisely endeavoured to further and promote the Lex Mercatoria, or customs of merchants: and this is not a modern doctrine; for a century and a half since, the celebrated Holt C. J. remarked, in the case of Crâmlington *v.* Evans (1688), 1 Show. 5.: "An universal custom is a law, and I know no distinction between Lex Mercatoria and Consuetudo Mercatorum."

The law of merchants, that is, the general custom of merchants, has in fact been over and over again declared by the first judges to be part of the common law of England. "The law of merchants,"

said Lord Kenyon, in Harrison *v.* Jackson (1797), 7 Term Reports, 207., "is part of the law of the land." The courts have even departed from old and sacred legal axioms to give the better effect to the law of merchants. For instance, in the very question of which I am treating, the law of Bills of Exchange, they have departed from a long settled determination, that the right to a chose in action, or right not in possession, cannot be transferred.

And again, that, as in the case of Bonds and other specialties, a Bill of Exchange, from the nature of the instrument, generally *implies* a sufficient consideration in the parties to the Bill, which consideration need not be stated by the plaintiff in the declaration, nor proved on the trial. Peckham *v.* Wood, 1 H. Black. 445. Meredith *v.* Chute (1701), 2 Lord Raym. 759, S. C. 1. Salk. 25. Holt C. J.: "The delivery shall be intended absolute and indefinite; and it is evidence of a debt, and therefore the parting with it is a good consideration."

This anxiety to adapt the laws of the land, and the judgments of the courts to the protection and encouragement of commerce, is a feeling traceable to the earliest periods of England's history; the very barons who extorted Magna Charta from King John did not forget the merchants' interests, when they were stipulating for their own, —a remembrance the more remarkable, since country barons, lords of manors, and mitred abbots of country secluded abbeys, were not the most likely persons to favour the oppressed merchant, the alien, and the outcast; and yet, to their immortal honour, they stipulated by the 30th chapter of this Great Charta (1215), that "Omnes mercatores, nisi publice antea prohibiti fuerint, habeant salvum et securum conductum, exire de Anglia et venire in Angliam et Morari, et ire per Angliam, tam per terram quam per aquam, ad emendum, vel vendendum sine omnibus malis tolnetis; per antiquas et rectas consuetudines, præterquam in tempore Guerræ. Et si sint de terra contra nos Guerrina, et tales inveniantur in terra nostra in principio Guerræ, attachientur sine dampno corporum suorum vel rerum, donec sciatur à nobis vel à capitali justitiario nostro, quomodo mercatores terræ nostræ tractantur, qui tunc inveniantur in terra illa contra nos Guerrina, et si nostri salvi sint ibi, alii salvi sint in terra nostra."

"This chapter" saith Coke, 2 Institute, 57, "concerneth merchant strangers, and it is to be considered what the ancient laws before this statute were concerning this matter. By the ancient kings (among whom was king Alfred), defendu fuit que nul merchant alien ne hantaft Angleterre forsque aux 4 foires, ne que nul demurrast in la terre ouster 40 jours. Mercatorum navigia vel inimicorum quidem quæcunq; ex alto (nullis jactata tempestatibus) in portum aliquem invehentur, tranquilla pace fruuntor; quin etiam si Maris acta fluctibus ad domicilium aliquod illustre, ac pacis beneficio donatum, navis appulerit inimica, atque istuc nautæ confugerint, ipsi et res illorum omnes augusta pace potiuntur. Int. Leges Ethel., cap. 2.

"It hath been the antient policy of the realm," says Coke, when commenting upon these ordinances, "to encourage merchant strangers; they have a speedy recovery for their debts, and other

duties, &c., per legem mercator, which is a part of the common law."

Montesqueiu, Spirit of Laws, b. 20. c. xii., commends very highly the early displayed humanity of the English to the merchant strangers. "Other nations," says the eloquent Frenchman, "have made the interests of commerce yield to those of politics; the English, on the contrary, have always made their political interests give way to those of commerce."

By the old laws of the Wisigoths*, foreign merchants strangers were to be well treated, and tried even by their own laws; Fuero Jusgo, lib. ii. p. 436.; and to this day our own courts will endeavour to give effect to foreign Bills of Exchange according to the laws of the country in which they are drawn.

So early as 1221, the plundering of shipwrecked goods by a Sicilian law was made capital. — Pragmaticæ Regni Siciliæ Panormi, 1637.

An ancient Bavarian law ordained, according to Lindenbroque's collection, p. 412., "Si autem aliquis tam præsumptuosus fuerit, ut peregrinis nocere voluerit xiv. Sol. mulctetur, Deus nam dixit Peregrinum et pauperum non contristabis de rebus suis."

The Welsh lawyers of the olden time, on the contrary, had none of these discriminating feelings in their composition. "Tres sunt homines quibus, multa pro injuriâ eis illata non debetur: scilicet furiosus, alienigena, et leprosus. Leg. Hoel Dda, p. 330.

The Japanese to this day, I believe, imprison shipwrecked mariners; and an old law of Cyprus ordained that all Jews landing on their coast should be put to death. Dio Cassius, l. xviii. Bar. on the Stat. p. 25. During the dark ages of England's history, although the law did not go quite the length of that of Cyprus, with regard to the poor Jews, yet still they were completely out of the pale of the law; to rob a Jew was legal, and even praiseworthy, and if he was refractory, to torture him into submission was by no means deemed an irregular proceeding.

DESCRIPTION OF BILLS, NOTES, &c.

A Bill of Exchange may be defined, An open letter, in which the writer desires a second person to pay a third, or any other person whom the third may order, or the bearer, a sum of money. There are several parties to a Bill of Exchange.

1. The drawer, or maker.
2. The drawee or person upon whom it is drawn, who by accepting it becomes
3. The acceptor, who is usually the payer, to the order of either the drawer or other person, who is therefore
4. The payee.
5. The indorser, from in-dorso, is the person who, by subscribing his name on the back of the bill, orders its payment to another person, who is the indorsee.

* The ancient Goths were divided into three great divisions — Ostrogoths, Wisigoths, and Gepidæ or Loiterers. Jornandes, c. 17. 1 Gibbon's Rom. Emp. p. 10.

Promissory Notes have, in the contemplation of the courts, a similar number of parties. — 1. The person who signs his name to the "I promise to pay," &c., is the drawee and acceptor.
2. The person to whose order it is made payable is regarded as the drawer, and first indorser, to subsequent parties, who are
3 Indorsees.

Bankers' Checks are payable to bearer at sight, are not usually indorsed, and should be drawn upon regular bankers.

They may be declared upon as Promissory Notes; are not due until presented.

But this must be done in reasonable time, which is a question for the consideration of the jury; the usual period allowed to the holder is one clear day.

I O U's are not regarded as Promissory Notes, they are merely evidences of a debt, and even then cannot be used as a set-off, without they are on stamps. Brooks *v.* Elkins (1836), 2 Meeson & Wels, 74. Fisher *v.* Leslie (1796), Espinasse, 426. Guy *v.* Harris, Bayley on Bills, 8. Israel *v.* Israel (1808), 1 Campbell, 499. Green *v.* Davies (1825), B. & C. 235. Morris *v.* Dixon, K. B. Easter T., 1836.

They are not receipts, and may therefore be received in evidence in an action of assumpsit for money lent, without being stamped. Childers *v.* Boulnois (1830), 1 D. & R., N. P. C. 8.

A Write Off is a Bill of Exchange, and, as such, needs a stamp. Emlyn *v.* Collins (1817), 6 M. & S. 144.

A Bill is not void by being drawn or dated on a Sunday Begbie *v.* Levy (1830), 1 C. & P. 180. 1 Tyrwhit. 130. Rex *v.* Whitmash (1827), 7 B. & C. 596. 1 M. & Ry. 452. Drawing a Bill not being a following of a man's ordinary calling, according to the 29 C. 11. c. 7.

The usual form of an Inland Bill of Exchange is as follows: —

£20. 10*s*. London, March 1. 1837.

Two months after date (or sight), pay to my order twenty pounds ten shillings, value received.

To Mr. T. B., Merchant,
Cheapside, London. } I. S.

The acceptance, which is usually written across the face of the Bill, is generally in these words: Accepted, payable at Messrs. ——, Bankers, London. T. P." This is a general acceptance; but if the acceptor wishes to make a qualified and special acceptance he adds, "and not otherwise or elsewhere."

A Promissory Note is usually in this form: —

London, March 1, 1837.

Two months after date, I promise to pay at ——— twenty-five Pounds ten shillings. I. S.

£25. 10s.

A Banker's Check is usually thus written: —

Messrs. Smith, & Co.

Pay Mr. ——, or bearer, twenty-two pounds ten shillings.

I. S.

£22. 10s.

A Foreign Bill of Exchange is usually in this form: —

London, March 1, 1837.

Two months (or usances after sight, or at sight), pay this my first Bill of Exchange (the second and third of the same tenor and date being unpaid), to Messrs. Smith & Co. or order, five hundred Pounds, value received from them, and place the same to account, as per advice from I. S.

To M. Von Ham, at Amsterdam.

Payable at ——

These, however, necessarily vary in form and expression

I O U's are a very simple mode of acknowledging a debt; they are usually in this form: —

March 1, 1837.

Mr. Smith,

I O U ten Pounds.

J. H.

USANCE.

Foreign Bills are usually made payable at usances after date or sight; the word usance merely means usage.

This usance varies according to the custom of different places.

The usance from London to Amsterdam, Rotterdam, Antwerp, Lisle, Rouen, Paris, is one month after the date of the Bill.

The usance from London to Spain and Portugal, 2 calendar months.

The usance from London to Florence, Leghorn, Venice, Aleppo, &c. is usually treble usance, or three months from the date of the Bill.

The usance from Amsterdam to Genoa, Venice, Naples, Palermo, Lisbon, is generally double usance, or two months. Molloy 277.

Half a usage is 15 days.

The usance does not include the day from whence the Bill is dated. A calendar month is an usance.

The day on which the Bill is dated is not included in the time it has to run; thus a Bill dated on the first day of the month, payable ten days after date, falls due on the eleventh, or rather with the three days of grace, on the 14th.

Here again the common law makes an exception in favour of the law of merchants, for in a lease to commence from the making the day of the date is included, although it is otherwise if the lease is to commence from the day of the date. Cramlington *v.* Evans, (1690), 2 Ventris, 307—310. Bellasis *v.* Hester (1697), Lord Raymond, 280.

Where a Bill is drawn from a place where old style prevails, and is remitted to a place using new style, the time is to be computed from the place at which it is drawn.

The old style is used in Russia, Denmark, Utrecht, Guelders, East Friesland, Geneva, and in the Protestant principalities and cantons of Germany and Switzerland.

New style, throughout Great Britain, the Low Countries (except the above mentioned), France, Portugal, Spain, Hungary, Italy, Poland, and the Catholic principalities and cantons of Germany and Switzerland.

The days of grace are the days allowed to the payee, by the custom of merchants, for the payment of the Bill; the number of these days of grace varies according to the custom of the place, where the Bill is payable.

In Great Britain, Ireland, and Vienna, it is three days.

Frankfort (out of fair time), four days.

Leipsick and Augsburg, five days.

Venice, Amsterdam, Rotterdam, Middleburgh, Antwerp, Cologne, Breslau, Nuremberg, and Portugal, six days

Naples, eight days.

Dantzic, Koningsberg, and France, ten days.

Spain, fourteen days.

Rome, fifteen days.

Hamburgh and Stockholm, twelve days.

Genoa, thirty days.

Sundays and holidays are generally included in the days of grace; but they are not so at Breslau, Nuremburg, Cologne, and Venice.

The day on which the Bill falls due, does not, except at Hamburgh, make one of the days of grace.

If the last day of grace falls on a Sunday, the Bill is payable on the previous day.

Bills payable at sight have no days of grace; but it is otherwise with those payable after sight.

A Bill payable after sight bears date from the day of the acceptance, and not from that of the presentation for acceptance.

It was not finally determined that three days' grace is to be allowed on Promissory notes, until the case of Brown *v.* Harraden, Hilary Term, 1791, 4 T. R. 148. Judge Buller: "The acceptor undertakes to pay the Bill on demand, on any part of the third day of grace, provided that demand be made within reasonable hours. — A demand at two or three o'clock in the morning would be at

an unreasonable hour; but, on the other hand, to say that the demand should be postponed till midnight, would be to establish a rule attended with mischievous consequences. — If this case were to be governed by any analogy to the demand of rent, payment of a Bill of Exchange could not be demanded till sunset."

CERTAIN LEGAL PROPERTIES OF A BILL OF EXCHANGE.

A Bill of Exchange, or even a bank note, cannot be taken in execution for a debt, or in a distress for rent. Fieldhouse *v.* Croft (1804), 4 East, 510. Knight *v.* Criddle (1807), 9 East, 48. "The attempt," said Lord Ellenborough, "is an innovation on the law, which ought not to be admitted." — See also French *v.* Nash, Rep. temp. Hardw. *53.*

The taking a Bill in exchange for a bond or other specialty debt, does not defeat any remedy on the latter. Drake *v.* Mitchell (1803), 3 East, *251.* And if a landlord takes a note of hand, and even gives a receipt for it for his rent, he may still distrain. Harris *v.* Shipway (1774), Buller's Nisi Prius, 182. Curtis *v.* Rush (1814), 2 Ves. & B. 416. Palfrey *v.* Baker (1817), 3 Price, *572.* But if a Bill is taken in full satisfaction, or discharge of another, the first does not revive if the second is not paid. Sard *v.* Rhodes (1836), 3 C. M. & Ros. *153.*

A Bill of Exchange is not exempt from the provisions of the statute of limitations; it must be demanded legally, within six years from its becoming due. Renew *v.* Axton, Carthew, 3.

A Bill of Exchange given as a donatio causâ mortis, must be endorsed; the bare delivery will not convey a property in them. Miller *v.* Miller (1735), 3 P. W. *356*; at least, without they are endorsed over by the donee for a valuable consideration. The same remarks apply to checks, which should be paid in the lifetime of the donor, or before the banker has notice of his death. Tate *v.* Hibbert, 2 Ves. Jun. 111. But bank notes or bonds pass under the same circumstances by mere delivery. Miller *v.* Race (1735), 3 P. W. *356.* Bills of Exchange do not pass by a bequest of all the testator's "property," though bank notes will. Stewart *v.* Bute (1804), 11 Ves. *657.*

CHAP. II.

THE DRAWER OF A BILL OF EXCHANGE, ETC.

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THE DRAWER.

The drawer is the person who draws the bill; his name must either be signed to or inserted in the body. Elliot *v.* Cooper (1725), Lord Raym. 1376. Taylor *v.* Dobbins (1721), 1 Strange, 399. "It is sufficient if his name is on any part of it: "I, H. S., promise to pay," is as good as "I promise to pay. — H. S." Saunderson *v.* Jackson (1802), 2 B. & P. 238. Or printed on it. Schneider *v.* Norris (1814), 2 M. & S. 286. Or his mark added. Phillimore *v.* Baring (1808), 1 Camp. 513. And it may be written with either ink or a pencil. Geary *v.* Physic (1826). 5 B. & C. 234. s. c. 7 D & R. 653. Jeffrey *v.* Walter (1816), 1 Stark. 267. Dickenson *v.* Dickenson 1814), 2 Phillimore, 173. And on any day in the week: it being dated or drawn on the Sunday is no objection. Begbie *v.* Levy (1830), 1 Cromp. and J. 180. 1 Tyrwht. 180. Drury *v.* Defontaine (1808), 1 Taunton, 131. Nor is any particular form necessary. See post, "Form of Bills."

The drawer must not be an infant, even if it is for bare necessaries. Trueman *v.* Hurst (1785), T. R. 40. ; or a feme covert, even if living separately from her husband, with a separate maintenance secured by deed. Marshall *v.* Rutton (1800), 8 T. R. 545. Neither are liable, although the bill is not vitiated *ab initio*, for all the subsequent parties are liable to the holder. Haly *v.* Lane (1741),

2 Atkyns, 181. Taylor *v.* Croker (1803), 4 Espinasse, 187. The executors of a deceased partner who continue the business for the benefit of the infant, are personally liable for all bills drawn in the name of the firm. Wightman *v.* Townroe (1813), 1 M. & S. 412.

A bill drawn by a feme covert upon her husband is void; but if the husband indorses it over, it is good. Haly *v.* Lane (1741), 2 Atkyns, 181. A man may draw upon himself. Starkey *v.* Cheeseman (1679), Carth. 509. s. c. 1 Salk. 128. Holt C. J.: "The drawing of the bill was an actual promise." If, however, the husband is legally dead, as when, for instance, he is transported, absent, or not heard of for seven years, then the woman is liable. Derry *v.* Mazarine (1693), 1 Lord Raym. 147. 1 Salk. 116. Corbet *v.* Poelnitz (1785), 1 T. R. 8. Lord Mansfield: "Where a husband is in exile or has abjured the realm, and credit has been given to the wife alone, justice says she must pay." Carrol *v.* Blencowe (1801), 4 Espinasse, 27. Barden *v.* Keverberg (1836), 2 Mees. & Wels. 61.

If a bill is drawn for a gambling debt, it is void by the 9 Ann, c. 14. s. 1. Steers *v.* Lashley (1794), 6 T. R. 61. Robinson *v.* Bland, Buller's Nisi Prius, 271.; and the Courts formerly held, even in the hands of *bonâ fide* holders, and where only the acceptor was cognizant of the gambling consideration. Henderson *v.* Benson (1820), 8 Price, 281. But latterly they have held the bill good in the hands of a *bonâ fide* holder, ignorant of the original consideration. Edwards *v.* Dick (1821), B. & A. 212. See also Newby *v.* Smith (1788), 2 Espinasse, 539. Day *v.* Stewart (1829), 6 Bing. 109., and 3 M. & P. 334. Greenland *v.* Dyer (1829), 2 M. & R. 422.

It has been held that a bill given for spirits sold in less quantities than 20*s.* at one time, is void by the 24 G. 2. c. 40. s. 12. Scott. *v.* Gilmore (1810), 3 Taunton, 226.; but the contrary doctrine was held by Lord Ellenborough at Nisi Prius in Spencer *v.* Smith (1811), 3 Campbell, 9.; and I should think that such a bill in the hands of a *bonâ fide* holder would be recoverable.

A bill of a longer duration than three months, or ninety days, is void, if tainted with usury, in the hands of parties privy to the usury. 12 Ann. cap. 16. s. 1.; and that however ingeniously the usury may be managed. Lowe *v.* Waller (1781), Douglas, 712.; in which Mansfield C. J. remarked: "The only question is, what is the real substance of the transaction, not what is the colour and form: no shift should enable a man to take more than the legal interest for a loan."

Bonâ fide holders of bills and other negotiable securities for a valuable consideration, concocted in usury, who are ignorant of the crime committed, are relieved by the 58 G. 3. c. 93., upon bills of any date.

And by the 3 & 4 W. 4. c. 98. s. 7. (the bank charter act), the usury laws no longer extend to bills or promissory notes made payable at or within three months after date, or not having more than three months to run; nor to a warrant of attorney given to secure such a bill. Connop *v.* Meaks (1834), 2 Adolp. & E. 326.

A bill drawn in consideration of a creditor signing a bankrupt's certificate is void by the 5 G. 2. c. 30. s. 11.; and if paid by the acceptor may be recovered by the bankrupt; and that too if the bill is given by a third person, the friend of the bankrupt. Smith *v.* Bromley (1760), Douglas, 670. Birch *v.* Jervis (1828), 3 C. & P. 379. "It is void," said Lord Tenterden, "in whose soever hands it may be, and whatsoever the consideration given by the holder."

These are cases where the legislature has thought proper to render the bill absolutely void; but there are other cases which are void only with regard to those who are aware of the illegality of the consideration. Steers *v.* Lashley (1794), 6 Term. Rep. 61. Or who receive such bills after they become due. Brown *v.* Turner (1798), 7 T. R. 630. As for instance, being for the non-performance of some legal duty. Mitchell *v.* Reynolds (1711), 1 P. W. 181. As where the defendant contracts not to pursue his business in England; but if he contracts not to pursue it within a reasonable distance, it is good. Davis *v.* Mason (1793), 5 T. R. 119. Hunlocke *v.* Blacklowe (1670), 2 Saunders, 155. All general restraints are bad.

As a reward for anything that is malum in se, or malum prohibitum. 1 Inst. 296.

The omission of something which is a duty. Sir Daniel Norton *v.* Sims (1614), 12 Hobart; where the plaintiff, being sheriff of Hampshire, covenanted with his under-sheriff not to execute process in any writ exceeding 20*l.*, without his special warrant.

To encourage crimes or omissions of duty (1555), Dyer, 118.

To encourage smuggling. Johnston *v.* Sutton (1779), Douglass, 241. Biggs *v.* Lawrence (1789), 3 T. Rep. 454.

To compromise a felony. Johnston *v.* Ogilvy (1734), 3 P. W. 277.

Illegal wagers; as with regard to cricket or any game in which, by the 9 Ann, c. 14. s. 1., betting above a certain sum is declared illegal. Lynal *v.* Longbotham (1756), 2 Wilson, 36. Jeffreys *v.* Waller (1740), 1 Wilson, 220. Or with regard to a public election, for any amount. Allen *v.* Hearn (1785), 1 T. R. 56. Or the duration of the war. Lacausade *v.* White (1798), 7 T. R. 535. Or upon the amount of the hop duty. Atherford *v.* Beard (1788), 2 T. R. 610.

To suppress evidence. Nerot *v.* Wallace (1789), 3 T. R. 17.; to compound a public nuisance. Fallows *v.* Taylor (1798), 7 T. R. 475.

In restraint or procuration of marriage. Lowe *v.* Peers (1768), 4 Burrows, 2225. In this case the promise was in these words: "I do hereby promise Mrs. Catherine Low, that I will not marry with any other person besides herself; if I do, I agree to pay to the said Catherine Lowe 1000*l.*, within three months after I shall marry any body else. Witness, &c. Newsham Peers."

And in Woodhouse *v.* Shipley, before Lord Hardwicke, 4 Atkyns, 318., the same doctrine was held.

In procuration of marriage. Coke's Lyttleton, 206. n. 1. Hall

v. Keene (1694), 3 Levinz, 411. s. c. Show, P. C. 78. s. c. 1 Brown's C. P. 60. Keat *v.* Allen (1707), 2 Vernon, 588.

In consideration of *future* fornication. Walker *v.* Perkins (1768), 3 Burrows, 1568. Mansfield, C. J.: "It is the price of prostitution — præmium prostitutionis; for if she *becomes virtuous*, she is to *lose* the annuity."

But it is otherwise if it is in recompense *for past* illicit connection, for then the bill is good. Turner *v.* Vaughn (1767), 2 Wilson, 339. Marchioness of Annandale *v.* Harris (1727), 2 P. W. 432. "It is but reason and justice," said the Lord Chancellor King, "that he should make her a reparation;" or as a marriage portion for a cast-off mistress. Cotterel *v.* Eaves (1778), 2 Cowper, 742.

A bill is also void between the parties if given to indemnify a parish from the expenses of keeping a bastard child, being contrary to the 6 G. 2. c. 31.

Any bill given on account of a wager, exciting to a breach of the peace, or hurtful to the feelings of a third person, or more than 10*l.* upon a horse race, is also clearly illegal. Blaxton *v.* Pye (1766), 2 Wilson, 309. De Costa *v.* Jones (1778), Cowper, 729. This was an action on a wager respecting the sex of the Chevalier D'Eon; and Lord Mansfield C. J. remarked: "I lay you a wager that you do not beat such a person; you lay that you will: such a wager would be void, because it is an excitement to a breach of the peace. I lay, 'I seduce a woman:' would a court of justice entertain an action upon such a wager? Most clearly not, because it is an excitement to immorality. Suppose a wager upon a subject contra bonos mores, like the case of Sir Charles Sedley, would a court of justice try a wager which excites to such indecency? Suppose a wager that affects the interests or feelings of a third person; for instance, that such a person had committed adultery: would a court of justice try the adultery in an action upon such a wager? Or a wager that an unmarried woman has had a bastard, would you try that? Would it be endured? Most unquestionably not; because it is not only an injury to a third person, but it disturbs the peace of society. Third persons, merely for the purpose of laying a wager, shall not wantonly expose others to ridicule, and libel them under the form of an action."

If, however, the wager is not against any statute, morality, decency, or the interest or feelings of a third person, or tend to a breach of the peace, such wager is legal, and a bill given for such consideration would be good at common law. Good *v.* Elliot (1790), 3 T. R. 693.

Great care and consideration, however, should be employed with regard to such bills, for the courts here have adopted a nice distinction with regard to wagers, which it is often difficult to preserve, and impossible to reconcile. It would be well if wagers of all descriptions were declared illegal. See Andrews *v.* Herne (1661), 1 Levinz, 98. Walcot *v.* Tappen (1660), 1 Keble, 56. (Upon the succession to the throne). March *v.* Piggot (1778), 5 Burrows, 2802. (Running lives). Pope *v.* St. Leger (1693),

Salk. 344. (Moving a piece at backgammon). s. c. 4 Mod. 409. 5 Mod. 4. 1 Lutw. 484. Hill *v.* Pheasant (1675), 2 Mod. 54. (Losing more than 100*l.* at a sitting). 2 Mod. 279. (Similar case.) Danvers *v.* Thistlethwaite (1668), 1 Sid. 394. (Similar case.) Hussey *v.* Jacob (1698), Salk. 344. (Similar case.) Blaxton *v.* Pye (1766), 2 Wilson 309. (nudum pactum), &c.; and the elaborate judment of C. K. B. in Good *v.* Elliot (1790), 3 T. R. 693.

It will not avail the drawer of a bill to attempt to evade the 19 G. 2. c. 87., against illegal wagers, by sheltering himself under the forms of even ordinary business transactions, if, in verity, the transaction is of a gambling description. Kent *v.* Bird (1777), Cowper, 583. Mansfield C. J.: "If there is no interest in the case, it is gaming and wagering."

A bill is void if drawn for the sale of, or promise to procure, any public office; or as the price of a vote at an election, however ingeniously managed, as by lending the voter 5*l.* on his note of hand; and that, too, if the voter afterwards voted against the corruptor, 2 G. 2. c. 24. s. 7. Sulston *v.* Norton (1761), 3 Burrows, 1235. Mansfield C. J.: "The offence was completely committed by the corruptor, whether the other party shall afterwards fulfil his promise or break it."

A bill is also void, which is given to induce any creditor to sign a composition deed, even if the bill is only to cover the just amount of the composition. Exparte Sadler and Jackson (1808), 15 Vesey, jun., 52.; either before or after the composition deed is signed. Mawson *v.* Stock (1800), 6 Vesey, jun. 300.; and if paid, the amount may be recovered in an action by the debtor against the creditor for money had and received. Turner *v.* Hoole, D. & R., N. P. R., 27. Cockshott *v.* Bennett, 2 T. R. 763. Smith *v.* Cuff (1817), 6 M. & S. 160. Constantein *v.* Blacke (1786), 1 Cox, 287.

And if a creditor induce a debtor to give him a promissory note for the amount of his debt, on condition of his inducing other creditors to take a composition for their debts, such promissory note is void. Fawcett *v.* Gee (1797), 3 Anst. 910. Wells *v.* Girling (1819), 4 Moore, 78. 1 B. & B. 447.

In all these cases the relief is not given on account of the individuals, but of the public, upon whom they are endeavouring to practise frauds. Attorney General *v.* Griffiths (1807), 13 Ves. jun., 581.

A bill of exchange drawn payable on an uncertain contingency is absolutely void; it is no bill of exchange. Palmer *v.* Pratt (1824), 9 Moore, 359. s. c. 2 Bingham, 186.

These are the principal general objections to the legality of a bill of exchange; but there are many others included under the foregoing general heads.

BILLS DRAWN BY AN AGENT.

A bill may be drawn by procuration, agent, or attorney, which authorority is given generally by word of mouth; and this *agent*

may be an infant, a feme covert, an outlaw, &c. Coke on Litt. 52. n. a. And when authority is given for a particular bill or bills, that authority ends with the drawing of those bills, without it is done by a servant, *general* agent, or factor, in which cases he has a general authority to draw; and the principal is bound for all bills he may draw, indorse, or accept on his behalf; and even, without notice, his executors after his death. Colin *v.* Anderson (1829), 4 Bligh, 513.; but there must either be an authority precedent, a subsequent consent, or it must be shown than the employer had trusted him generally with his affairs. Boulton *v.* Hillerden (1697), Salk. 450.

A bill drawn by an unauthorised agent is no payment, even if the bill is not returned to the acceptor; and it must also be signed to be a bill at all. Vyse *v.* Clark (1832), 5 C. & P. 403.

The defendant pleaded that the plaintiff had drawn a bill upon him for the amount 29*l.* 11*s.* 6*d.*; which he had accepted, and delivered to the plaintiff; the plaintiff replied he had not drawn the bill.

James Edmonds, the plaintiff's traveller, drew the bill, but did not sign the plaintiff's name; had no authority to draw the bill; he took the bill because he could not obtain cash, telling the defendant he thought it would be unsatisfactory; remitted it, and then the plaintiff arrested the defendant.

Baron Vaughan: "The issue is, whether the plaintiff did or did not draw a bill of exchange. The traveller having no authority to sign, he had no authority to draw; neither had he made the bill, for to a bill of exchange there must be a drawer."

An agent who draws a bill for another should state that fact, or otherwise he is personally liable: as I. S. for T. P., or I. S. per procuration of I. S., even if the agent is the clerk of a bank; Leadbitter *v.* Farrow (1816), 5 M. & S. 345.; or a broker who procures foreign bills, however small his commission; Goupy *v.* Harden (1816), 7 Taunton, 159.; or who sells goods for his principal. Le Fevre *v.* Lloyd (1814), 5 Taunton, 749. "Even the cashier of the York Buildings Company." Thomas *v.* Bishop (1734), Strange, 955.; was held to be personally liable.

"A merchant should no more be allowed to go from what he had subscribed in a policy, than he who subscribes a bill of exchange payable at such a date, shall be allowed to go from it, and say, that it was agreed to be on condition." Pemberton C. J., in Kaimes *v.* Knightly, Skinner, 54. See also 1 A. & E. 196 (1834).

The bare authority from an executrix to an attorney to settle accounts or to receive money for her, does not render her personally liable for his drafts, acceptances, or indorsements. Hay *v.* Goldsmith (1804), 2 Smith, 79, 80. Hogg *v.* Snaith (1808), 1 Taunton, 346.

If a person has been accustomed to employ an agent to draw bills for him, it will be advisable after he leaves his service, to give every correspondent, individually, notice of the fact, otherwise he will be liable for all bills he may draw in his name. Notice in a newspaper or the London Gazette is not sufficient. Godfrey *v.* Turnbull (1795), 1 Espinasse, 373.

If a drawer signs and indorses on blank stamps, that is binding

upon him for any amount the stamp will cover. Schulz *v.* Astley (1836), 2 Bingh. N. R. 544. 7 C. & P. 99. Russel *v.* Langstaffe (1780), Douglas, 496.

Mansfield C. J.: "The indorsement on a blank note is a letter of credit for an indefinite sum. It does not lay in the defendant's power to say the indorsements were not regular."

One partner drawing in the name of himself and partners, binds the whole. Harrison *v.* Jackson (1797), 7 T. R. 210. Provided the bill is on account of the said joint trade. Smith *v.* Jarret (1727), 2 Lord Raym. 1484. Green *v.* Deakin (1819), 2 Stark. 347. Barber *v.* Backhouse (1791), Peake, 86. Even if it is by procuration. Williamson *v.* Johnson (1823), 1 B. & C. 146. s. c. 2 D. & R. 281.; and Lacy *v.* Woolcott (1823), 2 D. & R. 458.

But this power of one partner to bind another, being only implied, is barred by a regular notice to the drawer, that the objecting partner will not be liable, even if the proceeds of the bill are, in fact, applied to the purposes of the partnership. Galloway *v.* Mathew, 10 East (1808), 264. s. c. 1 Campbell, 403. In the hands of a bonâ fide indorsee without notice, however, it is good. Wells *v.* Masterman (1790), 2 Espinasse, 731.

Where one partner drew and indorsed a bill in blank, and delivered it to a clerk to be filled up according to their usual course, who, after the death of the partner, filled it up, and inserted a date prior to his death; it was held that the surviving partners were liable to an innocent indorsee, although no part of the value came to their hands; and they had assumed a new firm. Usher *v.* Dauncey (1814), 4 Campbell, 97. s. c. 4 M. & S. 94.

Where a partner drew bills in his own name, and discounted them through the same agent and with the same banker as the bills which he drew in the name of himself and partners, it was held that the banker had no remedy against the firm for such bills, nor for money had and advanced, although it appeared that the money so obtained by the single partner was carried to the partnership account. Emly *v.* Lye (1812), 15 East, 7.

But where one of the several partners, and with their privity, drew bills in his own name, applying the proceeds to the use of the partnership, it was held that the payee might sue the partners for the debt, although they were not jointly liable on the bills. Denton *v.* Rodie (1813), 3 Campbell, 493.

Two of three partners cannot bind a third, without his consent, by their joint acceptance for a debt contracted before his admission into the partnership. Shirreff *v.* Wilkes (1800), 1 East, 48.

A bill drawn and accepted after the dissolution of partnership, although dated before, does not bind the other partners. Wright *v.* Palham (1816), 2 Chitty, 121.

It is no defence to plead that all the partners are not concerned in any particular branch of their profession, without a disclaimer is proved. ——— *v.* Layfield, Salkeld, 292. Pinkney *v.* Hall, (1696), 1 Lord Raym. 174. Salk. 126.

A bill must be drawn on a certain fund. A bill must not be drawn on a future and uncertain fund; if it is so drawn, it is no

bill of exchange. Dawksee *v.* Dolorane (1771), 2 W. Black. 782. s. c. 3 Wilson, 207. Carlos *v.* Fancourt (1794), 5 T. R. 482.

Lord Kenyon C. J. : "It would perplex the commercial transactions of mankind if paper securities of this kind were issued out in the world incumbered with conditions and contingencies; and if the persons to whom they were offered in negotiation were obliged to enquire when these uncertain events would probably be reduced to a certainty." See also Hartley *v.* Wilkinson (1815), 4 M. & S. 25.

But a note payable after a certain contingency, as after a certain ship shall be paid off, is good. Evans *v.* Underwood (1749), 1 Wilson, 262. Andrews *v.* Franklin, ibid. ; or after the death of a certain person. Coleman *v.* Cooke, ibid. ; or 13 years after date. Goss *v.* Nelson (1757), Burrows, 226.

The bill may also have an identifying memorandum upon it, without making it an agreement. Brill *v.* Crick (1836), 3 Cromp., Mees and Ros. 232.

It must, of course, be on a proper stamp, if an inland bill. But if a foreign bill, drawn abroad, a stamp is not required.

If a drawer of a bill, dated abroad is in England on the day the bill is dated, the bill is void for want of a stamp. Bire *v.* Moreau (1826), 2 C. & P. 376. 12 Moore, 226. 4 Bingham, 57.

But if a bill is written and accepted in England, and then transmitted abroad for the drawer's signature, it does not require an English stamp. Boehm *v.* Campbell (1818), 1 Gow. 56. Snaith *v.* Mingay (1813), 1 M. & S. 87.

The value of the required stamp depends upon the date on the face of the bill. Peacock *v.* Murrell (1819), 2 Starkey, 558. ; and a bill, therefore, two months after date, post dated ten days, was decided not to require a larger stamp than one for two months ; and that a bill may be altered without requiring a new stamp, provided the alteration is made before delivery ; or so that the making and alteration may be regarded as one transaction. Upston *v.* Marshall (1823), 3 D & R. 198. s. c. 2 B. & C. 10. Williamson *v.* Garrett (1833), 5 Barn. Adolph. 32. As a bill altered before acceptance, and with the consent of the drawer, from three to four months. Kennesly *v.* Nash (1816), 1 Starkey, 452. Downs *v.* Richardson (1822), 1 D. & R. 332. s. c. 1 B. & A. 674. But if the date is altered after it is due, it is void, even in the hands of a bonâ fide indorsee. Bowman *v.* Nichols (1794), 5 T. R. 537. And a penalty of 50*l.* is imposed by the 55 Geo. 3. c. 184. s. 11. upon the makers, signers, or issuers of bills not duly stamped.

A note for 30*l.* *with interest*, payable three months after date, only requires a stamp applicable to a note not exceeding 30*l.* Peacock *v.* Murrell (1819), 2 Starkey, 558. Pruessing *v.* Ing (1821), 4 B. & Ald. 204. But if payable sixty days after sight, it requires a stamp for a bill payable more than two months or sixty days after date. Stuardy *v.* Henderson (1821), 4 B. & Ald. 592. A note upon a receipt stamp imposed by the same statute, by which the duty is imposed upon the note, was valid. Aitcheson *v.* Sharland (1795), 1 Espinasse, 292. See the 37 Geo. 4.

c. 136. s. 5.; but it is now void by the 55 Geo. 3. c. 184. s. 10. And a note upon a deed stamp is also bad. Manning *v.* Line, Bayley on Bills, 454.

Though a Bill is void for want of a stamp, the plaintiff may go into evidence of the consideration, Wilson *v.* Kennedy (1795), 1 Espinasse, 245. Brown *v.* Watts (1808), 1 Taunton, 353. It is also evidence in a case of bribery at an election. Dover *v.* Maester (1803), 5 Espinasse, 92.; or of a collateral fact, Gregory *v.* Fraser (1814), 3 Campbell, 454. And if a note be produced with a proper stamp, the defendant cannot show that it was not stamped when made. Wright *v.* Riley (1793), Peake, 173. And before it is negotiated, a note may be converted into a bill. Webber *v.* Maddocks (1811), 3 Campbell, 1.

A Banker's Draft post dated requires a stamp, by the 31 G. 3. c. 25. s. 14. Allen *v.* Reeves (1801), 1 East, 435. s. c. 3 Espinasse, 281. Whitwell *v.* Bennett (1803), 3 B. & P. 559.

An unstamped Draft drawn on I. S., bricklayer, is not within the exception for banker's drafts of the 23 G. 3. c. 49. s. 4., drawn within ten miles of the bank. Castleman *v.* Ray (1801), 2 B. & P. 383.

A Write Off is a bill of exchange, and as such, requires a stamp. Emlyn *v.* Collins (1817), 6 M. & S. 144.

It is no defence, by an acceptor to an action on a bill of exchange, to plead want of consideration, if the holder or any intermediate person gave value for it. Morris *v.* Lee, Bayley on Bills, 397.

If the Bill is made payable at a banker's, the presentation for payment must be in the regular business hours; it will not suffice to present it when the clerks are gone and the shop shut up. Parker *v.* Gordon (1806), 7 East, 386. Lord Ellenborough: "If a party choose to take an acceptance payable at an appointed place, it is to be presumed that he will inform himself of the proper time for receiving payment at such place, and he must apply accordingly; and if by going there out of due time the bill be not paid, it is his own fault, and he cannot proceed as upon a dishonour of it, at least, not without going a step farther, and presenting it for payment to the party himself; otherwise it is fishing for the dishonour of a bill made payable at a banker's, to present it there for payment at a time when it is known, in the usual course of business, that it cannot be paid."

NOTICE OF DISHONOUR.

If the drawer has not reasonable notice of the drawee's refusal to accept or pay, he is exonerated. Darbyshire *v.* Parker (1805), 6 East, 3. Tindal *v.* Brown (1786), 1 T. R. 167. Muilman *v.* D'Equilar (1796), 2 H. Black. 565. Haynes *v.* Berks (1804), 3 B. & P. 599. Hillan *v.* Shepherd (1805), 6 East, 14. Allen *v.* Dockwra (1698), Salk. 126. Treby C. J.: "When one draws a bill of exchange, he subjects himself to the payment, if the person on whom it is drawn refuses either to accept or pay; yet that is with the limitation, that if the bill be not paid in convenient time, the person to whom it was payable shall give the drawer notice thereof, for otherwise the law will imply the bill paid,

because there is a trust between the parties; and it may be prejudicial to commerce if a bill may rise up to charge the drawer at any distance of time, when in the mean time all reckonings and accounts are adjusted between the drawer and the drawee." See also Parker *v.* Gordon (1806), 7 East, 385.

And this notice of demand and nonpayment is necessary, even if the bill is payable on demand and placed in the hands of a third person, as a security for advances made to the maker of the bill or note, who subsequently has failed. Smith *v.* Beckett, (1810), 13 East, 187. If the drawer has no effects in the hands of the drawee at the time of drawing, while the bill is running, or becomes due, he is not entitled to notice. Bickerdike *v.* Bollman (1786), 1 T. R. 405. Clegg *v.* Cotton (1802), 3 B. & P. 239.

Nothing but this will prevent the necessity of notice, not even if the bill is accidentally destroyed. Thackwray *v.* Blackett (1812), 3 Camp. 164. Dennis *v.* Morrice (1800), 3 Espinasse, 158. Van Wart *v.* Woolley (1824), 5 D. & R. 374, s. c. 3 B. & C. 439. Rogers *v.* Stephens (1788), 2 T. R. 713.; even if it be proved that there was an understanding between the drawer and the drawee, that the drawer should provide for the bill. Staples *v.* Okines (1795), 1 Espinasse, 332. Nicholson *v.* Gouthit (1796), 2 H. Black. 609.; or a declaration from the acceptor that he could not pay it. Baker *v.* Birch (1811), 3 Campbell, 107. And the notice of "presentation and dishonour" must express that fact, a mere demand for payment will not do. Solarte *v.* Palmer (1834), 1 Scott, 2.; confirmed on appeal to the House of Lords, 2 C. & F. 93. Hartley *v.* Case (1825), 4 B. & C. 339. 6 D. & R. (1825), 505.; but it is not necessary to state on whose behalf the notice is given (1836), 2 Mees. & Wels. 199.; and if the drawer has no effects in the hands of the drawee, and no reasonable grounds to expect that the bill will be accepted, he is not entitled to notice of non-acceptance. Legge *v.* Thorp (1809), 12 East, 171. s. c. 2 Campbell, 310. France *v.* Lucy, 1 R. & M. 341.

The drawer of an accommodation bill can receive no injury for want of notice, and therefore is not entitled to notice of a dishonour. Collott *v.* Haigh (1812), 8 Campbell, 281.

The acknowledgment of a drawer that the bill will not be paid, renders a notice of nonpayment unnecessary. Brett *v.* Levett (1811), 13 East, 213. Dowton *v.* Cross (1794), Esp. N. P. C. 168. Chapman *v.* Gardiner (1794), 2 H. Black. 279.

But if the drawer has any reasonable grounds for expecting payment or acceptance; Rucker *v.* Hillier (1812), 16 East, 43. s. c. 3 Campbell, 217. Robins *v.* Gibson (1813), 3 Campbell, 334.; or if he has effects to any amount in the drawer's hands at any time while the bill is running, he is entitled to notice. Hammond *v.* Dufresne (1811), 3 Campbell, 145. Orr *v.* Maginnis (1806), 7 East, 359. Neither does the fact of the indorser's having effects in the drawee's hands, though the drawer had not, alter the case; the drawer is still not entitled to notice. Walwyn *v.* St. Quentin, (1797), 1 B. & P. 652. s. c. 2 Esp. 515.

A subsequent promise to pay renders proof of notice, however,

unnecessary. Lundie *v.* Robertson (1806), 7 East, 231. Potter *v.* Rayworth (1812), 13 East. 417.; or if the drawer makes the bill payable at his own house, that is sufficient evidence of its being an accommodation bill Sharp *v.* Bailey (1829), 4 M. & R. 4.

The safest way, however, in all cases of nonacceptance or nonpayment, is to give all the parties to the bill notice, for it saves a great deal of otherwise necessary proof. Many judges have lamented the rule in Bickerdike *v.* Bollman (1786), 1 T. R. 405.; rendering notices in some cases unnecessary. Norton *v.* Pickering (1828), 8 M. & R. 23. Claridge *v.* Dalton (1815), 4 M. & S. 226., and Orr *v.* Maginnis (1806), 7 East, 359. It would certainly be well if this rule was reversed by a legislative enactment, since it gives rise very often, not only to difficulties, but to fraud and perjury.

Notice, either verbal or by letter, in the case of either a foreign or inland bill of exchange, is sufficient if done by a disinterested witness; even if the letter should not reach its intended destination. Kufh *v.* Weston (1799), 3 Espinasse, 54.

And this notice may, in all cases, be sent by a private hand. Bancroft *v.* Hall (1816), Holt, 476.; or by post, the general, if in the country. Saunderson *v.* Judge (1795), 2 H. Black. 509. The twopenny, if in its district; and by that, however near the parties live to each other. Halton *v.* Fairclough (1811), 2 Campbell, 633. Scott *v.* Lifford (1808), 9 East, 347.; and I would advise this to be done immediately the bill is refused acceptance or dishonoured; and as it has been doubted whether a notice sent on the day of the presentation and dishonour is not premature; Hartley *v.* Case (1825), 6 D. & R. 505. s. c. 4 B. & C. 339. 1 C. & P. 555. Burbridge *v.* Manners (1812), 3 Campbell, 193.; it will be well invariably to send the notice by the first post after the day of the dishonour, if reasonably practicable, more especially as what is a reasonable time for such notice, is a question of law arising out of the facts, for the consideration of the jury. Tindal *v.* Brown (1786), 1 T. R. 167. Mansfield C. J.: "What is reasonable notice, is partly a question of fact, and partly a question of law." Darbyshire *v.* Parker, (1805), 6 East, 3. s. c. 2 Smith, 195. If the jury err grossly in their determination, however, in this respect, the Court will grant a new trial. Goodman *v.* Shipway. Chamberlayne *v.* Delaryse, Buller's Nisi Prius, 276–7.

For Foreign bills, the notice should be sent on the day the bill is refused acceptance. Leftley *v.* Mills (1791), 4 T. R. 170.; or if no mail departs on that day, by the first regular conveyance. Muilman *v.* D'Equino (1795), 2 H. Black. 566.

In a notice by letter, it should state that the bill has been presented to the drawee and dishonoured; it will not be sufficient merely to demand the money, leaving the drawer to infer the presentation and dishonouring. Solarte *v.* Palmer (1834), 1 Bingham, 2 N. R. 194. 1 Scott, 2. 5 Moore and Payne, 475. 1 Tyrwhitt, 371. 1 Carrington & Jervis, 417.; confirmed on appeal to the House of Lords, 2 Clarke & Finnely, 95. Hartley *v.* Case (1825), 6 D. & R. 505. s. c. 4 B. & C. 339. 1 C. &

P. 555.; neither must an indorser be told by mistake in such notice that he is the drawer; it is not a notice. Beauchamp v. Cash, 1 D. & R. N. P. C. 3.

The letter should be, in London, posted at the general post office in St. Martin's-le-Grand, or its main branches; it will not do to deliver it to a bell-man in the street. Hawkins v. Rutt (1793), Peake, 187.; or to lay it in a place among other letters from whence they were usually carried to the post-office. Hetherington v. Kemp (1815), 4 Campbell, 193.

To direct to "Mr. Haynes, Bristol," was held to be too general a direction of a notice of a dishonour. Walter v. Haynes (1824), 1 R. & M. 149. But to direct "Manchester," to the drawer of a bill dated "Manchester," was held to be a sufficient direction. Mann v. Moors (1825), 1 R. & M. 249.

A letter containing a notice of a dishonour received on a Sunday, need not be opened till the Monday. Wright v. Showcross (1819), 2 B. & Ald. 501.

Where notice was sent from Holborn to Islington by nine o'clock at night of the day following the dishonour of the bill, it was deemed sufficient. Jamieson v. Swinton (1810), 2 Taunton, 224.

When a postmaster, who had agreed to deliver letters in a certain way, omits to deliver a letter, containing a returned bill, for two days, he is not liable for the amount of the bill, if the plaintiff could give notice of dishonour in time by a special messenger. Horden v. Dalton (1824), 1 C. & P. 181.

It is sufficient when the parties live in London if a letter be put into the post, so as to reach its destination on the evening of the day after the dishonour. Hilton v. Fairclough (1811), 2 Campbell, 633. But not if put into the twopenny post so late that it cannot be delivered until the next morning. Smith v. Mallet (1809), 2 Campbell, 208.

A London banker, Scott v. Lifford (1808), 9 East 347., or a country banker, is allowed an entire day to transmit notice to his customer of the dishonour of a bill payable in London, and his notice need be sent to his customer only, who is to advise the prior indorsers. Bray v. Hadwen (1816), 5 M. & S. 68. Ellenborough, C. J.: "It has been laid down, I believe, since the case of Darbyshire v. Parker, 6 East, 3., as a rule of pratice, that each party, into whose hands a dishonoured bill may pass, should be allowed one entire day, for the purpose of giving notice; see also Scott v. Lifford (1808), 9 East, 347. Langdale v. Trimmer (1812), 15 East, 291. Hilton v. Shepherd (1796), 6 East, 14." But a holder of a bill must not take as many days before he gives notice to an indorser, as he skips over prior indorsers. Hilton v. Shepherd (1796), 6 East, 14.

The law of merchants respecting the religion of the holder. A Jew drawer is not obliged to give notice on a festival, on which by his religion he is forbid to attend to secular affairs. Lindo v. Unsworth (1811), 2 Campbell, 602.

If a holder is ignorant of the address of a party to a bill, it will be sufficient if he uses ordinary diligence to find it out, and gives

notice as soon as he learns the address. Baldwin *v.* Richardson (1823), 2 D. & R. 285. s. c. 1 B. & C. 245. Browning *v.* Kinnear (1819), Gows, 81.; which ordinary diligence is a question of fact, to be left to the jury. Bateman *v.* Joseph (1810), 12 East, 433. Goodall *v.* Dolley (1787), 1 T. Rep. 712. Although in Sturges *v.* Derrick (1810), Wightwick, 76., the court of exchequer held that such diligence is a question of law. It will not do merely to make inquiries where the bill is payable. Beveridge *v.* Burgess (1812), 3 Campbell, 262. A duplicate copy of a letter containing notice of a dishonour, has been held to be admissible in evidence, without a previous notice to the defendant, to produce such original letter. Swain *v.* Lewis (1835), 2 C. M. & Ros. 261. King *v.* Beaumont (1822), 3 B. & B. 288. 7 Moore, 112. Roberts *v.* Bradshaw (1815), 1 Starkey, 28; or when no copy has been kept parole testimony of that notice may even be given without notice to produce. Ackland *v.* Pearce (1811), 2 Campbell, 601. Collings *v.* Trewack (1827), 6 B. & C. 394.

But as the contrary has been held at Nisi Prius, it will be well in all cases so give the defendant notice to produce. Langdon *v.* Hulls (1804), 5 Espinasse, 157.

The letter containing a notice of dishonour may be left by a messenger, at the house in which the defendant lodges. Stedman *v.* Gooch (1793), 1 Espinasse, 4.

A verbal notice is sufficient, and at a merchant's counting-house during the ordinary hours of business, even if no one is there: it is not necessary to leave or send a written notice. Goldsmith *v.* Blond, Bayley on Bills, 224. Crosse *v.* Smith (1818), 1 M. & S. 545. Lord Ellenborough C. J.: "The counting-house is a place where all appointments respecting the joint business, and all notices should be addressed, and it is the duty of the merchant to take care that a proper person be in attendance;" and it is sufficient if between six and seven o'clock in the evening at a merchant's counting-house. Bancroft *v.* Hall (1816), Holt, 476.

A notice of a dishonour must come from a party to the Bill, his attorney, banker, or agent. Woodthorpe *v.* Lowes (1836), 2 Mees & Wels. 130.; but any party will do. Wilson *v.* Swabey (1815), 1 Starkey, 34. Jameson *v.* Swinton (1810), 2 Campbell, 373. s. c. 2 Taunton, 224.; even an acceptor. Rother *v.* Kiernan (1814), 4 Campbell, 87. But the notice should more properly come from the holder. Hopes *v.* Alder (1800), 6 East, 16. Tindal *v.* Brown (1786), 1 T. R. 167. And from an unauthorised stranger will certainly not be sufficient. Stewart *v.* Kennett (1809), 2 Campbell, 177.

The drawer of a Bill accidently destroyed is still entitled to notice of nonacceptance or dishonour, although he has had notice of the destruction of the Bill, and refused to give a new one as directed by 9 & 10 W. 3. c. 17. s. 3., and although the drawee is insolvent. Thackray *v.* Blackett (1812), 3 Campbell, 164.

If one of the several drawers is also the acceptor, notice of dishonour to him is unnecessary. Porthouse *v.* Parker (1807), 1 Campbell, 82. Jacaud *v.* French (1810), 12 East, 317. But I would in all cases advise the holder of a dishonoured Bill, in cases apparently the most unnecessary, such as his death or absconding, to

attempt to give the drawer or his representative the regular notice, by sending even to an empty house, a competent witness.

If notice of non-acceptance is omitted, the drawer and indorsers are exonerated. Roscoe *v.* Hardy (1810), 12 East, 434, s. c. 2 Campbell, 458. Goodall *v.* Dolley (1787), 1 T. R. 712.; even if the party in ignorance of being thus exonerated promised to pay. Blisard *v.* Hurst (1770), 5 Burrows, 2670. But if, after this omission, before the Bill becomes due, the holder pays the Bill away to another person for a valuable consideration, who again presents the Bill for acceptance in ignorance of a former presentation, and upon a refusal to accept gives regular notice to the drawer and other parties, then the liability of the drawer and indorser is restored. Dunn *v.* Keefe (1815), 1 Marshall, 613. 6 Taunton, 304. 5 M. & S. 282. Abbot J.: "I confess it always appeared to me to be an anomaly, that the holder of a Bill of Exchange should not be bound to present it for acceptance, and yet, if he does present it, and acceptance is refused, that he should be bound to give notice to the drawer, under pain of having him discharged: to extend, however, the doctrine of discharge to a case like the present, would be attended with very injurious consequences, as it would almost destroy the negotiation of instruments of this nature; for no prudent person would take a Bill of Exchange if it were to be subject in his hands to all such latent defects as the present."

If the drawer has absconded, or become bankrupt, still notice should be sent to his house, or to his assignees, otherwise he is exonerated. Rhodo *v.* Procter (1825), 6 D. & R. 610. s. c. 4 B. & R. 517.

And if the drawer gives a Bill, as a security for a dishonoured acceptance, and the holder omits to give him notice of the second Bill being dishonoured by the drawee, the drawer is thereby exonerated, both as acceptor of the first Bill and drawer of the second. Bridges *v.* Berry (1810), 3 Taunton, 130.

Even the notice by the acceptor to the drawer that he could not pay, and a payment by him to the drawer of part of the amount of the Bill, in order that he might, according to his promise, take up the Bill, will not prevent the necessity of a notice to the drawer, of a presentation and dishonour. Baker *v.* Birch (1811), 3 Campbell, 107. Forster *v.* Jurdison (1810), 16 East, 105.

If the drawer pays part of a Bill without objecting to want of notice, the court will leave it to the jury in an action against him, that due notice has been regularly given. Harford *v.* Wilson (1807), 1 Taunton, 12. The drawer in case of dishonour is bound to pay in reasonable time after receiving notice; where a drawer received notice the day after the dishonour, and tendered the money on the following day, the court held him to be in time. Walker *v.* Barnes (1813), 1 Marshall, 36.

If the drawer of a Bill of Exchange refuses to accept, the holder may proceed against the drawer without waiting until the Bill becomes due. Bright *v.* Parrier (1765), Burrows, 1687. Buller's Nisi Prius, 269. Macarty *v.* Burrow (1733), 2 Strange, 949. Milford *v.* Mayor (1779), Douglas, 55. Buller J.: "It is settled that if a Bill of Exchange is not accepted, an action on the Bill will be

immediately maintainable against the drawer, although the time of payment is not come."

The holder of a bill, in case of a qualified acceptance, may resort to the drawer, as for a non-acceptance. Gammon *v.* Schmoll, (1814), 1 Marshall, 80. 5 Taunton, 344. Chambre J.: "I think the case is clear upon rules of plain common sense and understanding. A man is not bound to receive a limited and qualified acceptance; he may refuse it, and resort to the drawer; but if he does receive it, he must conform to the terms of it."

The drawer is not liable for interest on the bill from the time the bill was dishonoured by the acceptor to the time when he received notice of the dishonour. Walker *v.* Barnes (1813), 5 Taunton, 240.

The drawer is not exonerated by the holder receiving part payment of the indorser. Walwyn *v.* St. Quentin (1797), 1 B. & P. 652. S. C. 2 Espinasse, 515.

An agreement between the holder and the acceptor that the latter shall pay the amount of the bill, exonerates the drawer. De la Torre *v.* Barclay (1814), 1 Starkey, 7.

If the bill is declared void, in some cases the debt shares the same fate; but in others the debt is good, although the bill is void. Clark *v.* Mundal (1691), Salk. 124. Holt C. J.: "If A. sells goods to B., and B. is to give a bill in satisfaction, B. is discharged, though the bill is never paid, for the bill is payment; but otherwise a bill shall never discharge a precedent debt or contract; but if part be received, it shall be only a discharge of the old debt for so much." Darrach *v.* Savage (1690), 1 Shower, 155.

LOST OR STOLEN BILLS.

If a bank bill is lost, payable to A. or bearer, action of trover will lie against the finder, for he has no title, though the payment to him would have indemnified the bank; but if the bill is paid away by the finder to A. for a valuable consideration, action will not lie against A., for the custom of trade creates a property in the assignee or bearer. Salk. 126.

The holder of a lost or stolen bill, who has given for it a valuable consideration, can recover of the drawer. Grant *v.* Vaughan (1764), 3 Burrows, 1516. 1 W. Black. 485. But certainly not if the indorsement has been forged. Johnson *v.* Windle (1836), 3 Bingham's N. C. 225. Tindal C. J.: "No title can be obtained through a forgery."

FORM OF A BILL OF EXCHANGE.

No particular form of words is necessary in drawing a bill; for it has been held that a note drawn in these words, "I promise to account with I. S. or his order for 50*l.*, value received by me," &c. is a good negotiable note; for "account" was here held to mean "pay." Morris *v.* Lea, Comyn's Dig. art. Merchant. And

if the word "pounds" is omitted, it is not material. Phipps *v.* Tanner, 5 C. & P. 488. Or the words "value received." White *v.* Ledwich, 4 Douglas, 247. And "value received" means "by the drawee." Highmore *v.* Primrose (1816), 5 M. & S. 65.

In case there is an intentional fraud on the part of the drawer, the court will look to the principal intention of the parties, that they should be severally and jointly bound. In Simpson *v.* Vaughn, 2 Atkyns, 31., Lord Hardwicke mentioned a case on the Northern Circuit before Lord Macclesfield. "A girl, in consideration of 20*l.* submitted herself to the pleasure of a man; he was so ungenerous as to refuse payment, and she was obliged to sue him upon his note, which in the beginning of it was mentioned to be for 20*l.* borrowed and received; but in the latter end were these words 'which I promise never to pay.' My Lord Macclesfield held that here is a good foundation for an *assumpsit*, upon the lending on one side, and the borrowing on another; and the words in the conclusion of the note will make no variation, and consequently the plaintiff is well entitled to recover the 20*l.* Russell *v.* Langstaffe (1780), Douglas, 486. Peach *v.* Kay, Bayley on Bills, 6.

Even if the bill is drawn to the order of a fictitious person, it is good against all the parties to the bill. Minet *v.* Gibson (1824), 3 T. R. 481. 9 Moore, 31—46. 1 H. Black. 569—625. 1 C. & P. 247. 2 Bing. 7. R. & M. 68.

A bill or promissory note is not in general available without it is delivered by the maker; as, for instance, a promissory note found among a deceased person's papers. Disher *v.* Disher (1712), 1 P. W. 204.

A bill need not have the words "or bearer or order." Smith *v.* Kendall (1795), 1 Espinasse, 231.

If there is a fixed place of payment, the drawer need not write the drawee's name on the bill; for if the drawee accepts it in that form, he adopts the bill. Gray *v.* Miller (1819), 2 Starkie, 336. 3 Moore, 90. S.C. 8 Taunton, 739.

If the bill is so drawn, either through ignorance or fraud, that it is doubtful whether it is a note or a bill, the holder may treat it as against the drawer as either. Edis *v.* Bury (1827), 6 B. & C. 433. Block *v.* Bell, 1 M. & R. 149. Shuttleworth *v.* Stephens (1808), 1 Campbell, 407 and 115.

PRESENTATION FOR ACCEPTANCE.

A bill drawn payable after date need not be presented for acceptance at all; the presentation for acceptance, however, must be made and refused, before an action can be brought against the drawer. Cheech *v.* Roper (1805), 5 Espinasse, 175.

But if an inland bill is payable after sight, it is necessary to present or pay it away in some reasonable time; which reasonable time is a question for the jury to determine on the circumstances of the case. Fry *v.* Hill (1817), 7 Taunton, 398. In this case the jury thought a bill drawn at Windsor on London might be kept four days without laches.

Gibbs C. J.: "The holder must present a bill payable after sight within a reasonable time; but it is in the power of the holder to postpone the day of payment by postponing the date of the presentment for acceptance, and he certainly may put the bill into circulation if he will." See also Shute *v.* Robins, 3 C. & P. 80. M. & M. 133.

Foreign bills of exchange payable after sight may be kept back, according to the convenience of the holder, an unlimited period, or circulated to an indefinite period. They are regarded, it seems to me very improperly, as unlimited letters of credit. Muilman *v.* D'Equila (1796), 2 H. Black. 365. Goupy *v.* Harden (1816), 7 Taunton, 159. And in the more recent case of Melhuish *v.* Rawdon (1832), 2 Moody & Scott, 570., 9 Bing. 416., where the holder absolutely kept it in his possession for nearly five months, and the drawee failed after he had accepted it and special loss was proved.

It is usual to leave a bill for acceptance 24 hours with the drawee, and this is commonly done in business hours. Bellasis *v.* Hester (1697), 1 Lord Raym. 280.

If the drawee has absconded, or there is a false address on the bill, it must be treated as a dishonoured bill. 1 Lord Raym. 743. But if the drawee has only removed, the holder of the bill is bound to follow him. Collins *v.* Buller (1738), Strange, 1087.

If the drawee requires further time for consideration before he accepts, it will be well for the holder to give the drawer and indorsers notice of the circumstance. Ingram *v.* Forster (1805), 2 Smith, 242.

If a bill is refused acceptance, notice should be sent to the drawer and indorsers; and in the case of a foreign bill, it should be protested, and notice of the non-acceptance and protest sent by the same post, otherwise the drawer is exonerated. Orr *v.* Maginnis (1806), 7 East, 359. Gale *v.* Walsh (1789), 5 T. R. 239. Rogers *v.* Stephens (1788), 2 T. R. 714. But a subsequent innocent indorsee may present for acceptance, protest, and give notice, and so render the drawer liable. Dunn *v.* Keefe (1815) 6 Taunton, 304. 5 M. & S. 282. 1 Marsh, 613.

THE DRAWER MAY BE A WITNESS.

In an action against the acceptor of an accommodation bill, the drawer is not without a release a competent witness. Hardwick *v.* Blanshard (1819), Gow, 113. Cartwright *v.* Williams (1818), 2 Starkie, 340. Jones *v.* Brooke (1812), 4 Taunton, 464. Because he does not stand equally indifferent to the indorsee and the acceptor, who could recover against him the costs of the action, and all other expenses; since, as Lord Mansfield remarked, "the drawer of an accommodation bill is bound to indemnify the acceptor against the consequences." Larbalastier *v.* Clark, 1 Barn. & Adol. (1830), 899. If, however, he has become a bankrupt, and obtained his certificate, he is then a competent witness. Brind *v.* Bacon (1813), 5 Taunton, 183. Ashton *v.* Longes (1827), M. & M. 127.

But in all other cases the drawer is a competent witness for either party, without a release, even in case when, by the course of mutual dealings, he happened to be in debt to the drawee when the bill was accepted. Bagnall *v.* Andrews (1830), 7 Bing. 217. Or even if he is to prove that from the want of a stamp or other circumstance the bill is absolutely void. Jordaine *v.* Lashbrook (1798), 7 T. R. 601. Cooper *v.* Davis (1795), 1 Espinasse, 463. Or that the date has been altered. Levi *v.* Essex (1775), 2 Espinasse, 708.

CHAP. III.

THE DRAWEE AND ACCEPTOR.

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THE DRAWEE AND ACCEPTOR.

The drawee is the person on whom the bill is drawn; by accepting the bill he becomes the acceptor. The usual form of accepting, is by writing across the face of the bill, "Accepted, payable at ——, I. S.;" which by the 1 & 2 Geo. 4. c. 78. is a general acceptance, and the holder need not present it for payment at any particular time or place, for such omission will not exonerate the acceptor. Turner *v.* Haydon (1825), 4 B. & C. 3. Selby *v.* Eden (1826), 3 Bingham, 611. 11 Moore, 511. Without the words are added, "and not otherwise or elsewhere."

If these words are added to the acceptance, it is a special acceptance, and then non-presentation at the specified time and place exonerates all parties to the bill — acceptor, drawer, and indorsers. Ambrose *v.* Hopwood (1809), 2 Taunton, 61. Callaghan *v.* Aylet (1811), 3 Taunton, 396. Saunderson *v.* Bowes (1811), 14 East, 508. Lord Ellenborough: "It would be very inconvenient that the makers of notes of this description should be liable to answer them everywhere, where it is notorious that they have made provision for them at a particular place, where only they engage to pay them."

The acceptor is the principal and first party liable. Yallop *v.* Ebers (1831), 1 Barn. & Adol. 703. Philpot *v.* Bryan (1828), 4 Bingham, 717. Dingwall *v.* Dunster (1779), Douglas, 249. Smith *v.* Knox (1800), 3 Espinasse, 47. Clark *v.* Devlin (1803), 3 B. & P. 363. Pownal *v.* Ferrand (1827), 6 B. & C. 439. And by far the most important party to a bill of exchange, for

hardly anything but payment or a release will discharge him. Fentum *v.* Pocock (1813), 5 Taunton, 195. S.C. 1 Marshall, 14. Heath J.: "He who comes under the character of acceptor makes himself liable as such in all circumstances; nothing can discharge him but payment or release."

Even an express declaration of the holder will not discharge the acceptor, without it is for consideration. Parker *v.* Leigh (1817), 2 Starkie, 228. And entirely unconditional. Whateley *v.* Fricker (1807), 1 Camp. 35.

The payment, however, by the drawer, entirely discharges the acceptor, and renders the bill no longer negotiable. Bacon *v.* Searle (1788), 1 H. Blackstone, 88.

The acceptor must not accept a bill not "duly stamped;" if he does, by the 55 G. 3. c. 184. s. 11. he is liable to a penalty of fifty pounds.

When a bill is presented for acceptance, which should be at the drawee's residence, not at the place of payment — Mitchel *v.* Baring (1829), 10 B. & C. 4. — the drawee may take twenty-four hours to examine and consider. Bellasis *v.* Hester (1697), 1 Lord Raym. 281. Ingram *v.* Foster (1805), 2 Smith, 243.

If the drawee cannot be found, or has absconded, the bill must be considered as dishonoured; but if he has only removed, the holder is bound to follow, and endeavour to find him. "Whether he has used due diligence to discover the place of residence of the person to whom the notice is to be given, is a question of fact for the jury;" per the court in Bateman *v.* Joseph (1810), 12 East, 434. Collins *v.* Butler (1738), 2 Strange, 1087. Beverige *v.* Burgess (1812), 3 Campbell, 262. Lord Ellenborough: "That he used reasonable diligence to find it out." Browning *v.* Kinnear (1819), 1 Gow, 81.

And the presentation must be in the usual hours of business; whether of a banker or other tradesman. Elford *v.* Teed (1813), 1 M. & S. 28. Parker *v.* Gordon (1806), 7 East, 385. Any time during the day will, however, suffice, so that an answer is given by an authorised agent. Henry *v.* Lee (1814), 2 Chitty, 124. Bayley J.: "If no one is there, it will not do; but if there is, then it is immaterial at what time it is presented." Garrett *v.* Woodcock (1816), 1 Starkey, 475.

There is no necessity to present a bill for acceptance payable after date until it is due. O'Keefe *v.* Dunn (1816), 5 M. & S. 282. 6 Taunton, 305. Orr *v.* Maginnis (1806), 7 East, 362. Lord Ellenborough: "The holder is not bound to present it for acceptance until due." Goodal *v.* Dolley (1787), 1 T. R. 714. Blesard *v.* Hirst (1770), 5 Burrows, 2670.

But it is certainly necessary to present for acceptance bills payable after sight, "since," said the court, "no debt arises upon a bill payable after sight until presented for payment;" and it cannot be presented for payment until it is accepted or "sighted." Holmes *v.* Kerrison (1810), 2 Taunton, 323. Thorpe *v.* Booth (1826), R. & M. 388.

In the case of inland bills payable after sight, they must be circulated, or the presentation for acceptance must be made in reasonable

time; they must not be locked up. Shute *v.* Robinson (1827), M. & M. 133. Boehm *v.* Stirling (1797), 7 T. R. 425. But what this reasonable time is, is a question for the jury. In the case of a foreign bill, however, payable after sight, the holder may keep it by him as long as he pleases before he sends it for acceptance. Melhuish *v.* Rawdon (1832), 2 M. & Scott, 570. This, however, I think, requires some legislative regulation; for it is absurd to suppose that the drawer of a bill payable after sight is to have an unlimited confidence in the stability of his drawee.

It is immaterial whether the bill be accepted before it is drawn or after. Rupell *v.* Longstaffe (1780), Douglas, 496. Powell *v.* Duff (1812), 3 Campbell, 182. Molloy *v.* Delves (1831), 4 C. & P. 492. Collis *v.* Emmett (1790), 1 Hen. Black. 313. The acceptor will be liable for any sum the stamp will cover.

And if the word "accepted" is written, there is no absolute need of a signature; the acceptance is not invalid under the 1 & 2 G. 4. c. 78. s. 2. Dafaur *v.* Oxenden (1831), 2 M. & M. 90. Leslie *v.* Hastings (1831), 2 M. & M. 119.: if the jury think the acceptor intended an acceptance.

By 15 Geo. 3. c. 51., made perpetual by the 27 Geo. 3. c. 16., all promissory notes, bills of exchange, drafts, undertakings in writing, which are negotiable or transferable for a less sum than 20*s.*, are null and void. See also 17 Geo. 3. c. 30. By 7 Geo. 4. c. 6. s. 4., a penalty of 20*l.* is inflicted upon the issuer of any promissory note payable on demand for less than 5*l.*

No acceptance to an inland bill is valid unless made in writing. 3 & 4 Ann. c. 9. s. 4. 1 & 2 G. 4. c. 78. Downes *v.* Richardson (1822), 1 D. & R. 332. S. C. 5 B. & Ald. 674.

But a bill drawn in Ireland or Scotland upon a person in England is not considered an inland bill under this statute. Mahoney *v.* Ashlin (1831), 2 B. & Adolph. 478.

An acceptance may be written with a pencil. Geary *v.* Physic (1826), 5 B. & C. 234.

In a foreign bill of exchange, however, the case is different, for an acceptance may be made in various ways; and even a promise to accept has been held to be equivalent to an acceptance. Pillans *v.* Rose (1763), 3 Burrows, 1663. Fairlie *v.* Herring (1826), 3 Bingham, 625.

A mere promise to pay after the bill has become due and been dishonoured, has been held sufficient. Jackson *v.* Piggott (1698), 1 Lord Raym. 364. S. C. Salkeld, 126. Gregory *v.* Walcup, Comyn, 75. Mitford *v.* Wallicol (1700), Salkeld, 129.

And even an implied acceptance has been held binding. Powell *v.* Morier (1737), 1 Atkyns, 611. In this case the drawer kept the bill an unusual time, marked it "No. 84.," and added "6th of May," which was the day when it was payable. Harvey *v.* Martin (1807), 1 Campbell, 425.

But when the drawee refused acceptance, kept it a considerable period, and then destroyed it, he was held not liable as an acceptor. Juene *v.* Ward (1808), 1 B. & Ald. 653. S. C. 2 Starkey, 326.

There is some doubt if a drawee, after he has once accepted,

can evade his acceptance. Bentick *v.* Dorrien (1805), 6 East, 200: 2 Smith, 337. Thornton *v.* Dick (1803), 4 Esp. 270. Nor can he cut it off the bill after acceptance. Trimmer *v.* Oddie, Bayley on Bills, 161.

Although in Bentick *v.* Dorrien the court were in doubt whether it could be cancelled or not. Yet in Cox *v.* Troy (1822), 1 D. & R. 38., S. C. 5 B. & Ald. 474., it was decided that a banker could cancel his acceptance before delivery. But at any rate, if the acceptor is alone the responsible party, the bill must not be protested for non-acceptance. Sprout *v.* Matthews, 1 T. R. 185. Bentick *v.* Dorrien, 6 East, 199. And in Fernandey *v.* Glyn (1807), 1 Campbell, 426., it was allowed that a banker might return a check cancelled by mistake. Moore *v.* Warren (1721), 1 Strange, 415.

The drawer of a bill may also be the acceptor. Harvey *v.* Kay, (1829), 9 B. & C. 364. But in that case in an action it may be treated as a promissory note, and the defendant is not entitled to notice of dishonour. Roach *v.* Oastler (1827), 1 M. & R. 120.

An infant (Trueman *v.* Hurst (1785), 1 T. R. 42.), or a feme covert (Holloway *v.* Lee, 2 Moore, 211. Marshall *v.* Button (1800), 8 T. R. 545.), cannot accept bills but as agents for other persons. But the executors of a deceased partner, who continue the partnership for the benefit of an infant, are personally liable. Wightman *v.* Townroe, 1 M. & S. 412. And a bill accepted by a person after he is of age, though drawn when he was an infant, renders him liable. Stevens *v.* Jackson (1815), 1 Marshall, 469. 4 Campbell, 164. See also Richards *v.* Browne (1837), 15 Law Journal R. 95.

Neither, under the 3 & 4 W. 4. and other acts now in force with regard to the Bank of England, can a London banking company consisting of more than six persons be the acceptors of a bill of exchange. The Bank of England *v.* Anderdon (1837), 3 Bingham's N. C. 667.

An acceptor is not liable to the drawer for a bill founded in a gambling transaction. Robinson *v.* Blond, Buller's Nisi Prius, 271. But he is liable to a bonâ fide holder ignorant of the consideration. Newby *v.* Smith (1788), 2 Espinasse, 539. Edwards *v.* Dick (1821), 4 B. & Ald. 212. Judge Bayley: "It would be most unfit to allow this defence to a defendant, who having indorsed over, and thereby asserted the bill to be valid, afterwards when called upon to pay says that it is invalid, and that in consequence of fraudulent conduct to which himself has been a party." See also 5 & 6 W. 4. c. 41.

The same doctrine holds good with regard to bills tainted with usury having more than three months to run, by the 3 & 4 W. 4. c. 98. s. 7.; the usury laws no longer extend to bills having less than three months to run; and by the 58 G. 3. c. 93. innocent holders for a valid consideration are relieved from loss in bills founded on usury of any length.

An acceptance given in consideration of a creditor signing a bankrupt's certificate was void by the 5 G. 2. c. 30. s. 11. Smith *v.* Bromley (1760), Douglas, 670. And this was confirmed by the

6 G. 4. c. 16. s. 125., which says "that any contract or security made or given by any bankrupt or other person unto or in trust for any creditor, or for securing the payment of any money due by such bankrupt at his bankruptcy, as a consideration or with intent to persuade such creditor to consent to or sign such certificate, shall be void; and the money thereby secured or agreed to be paid shall not be recoverable; and the party sued on such contract or security may plead the general issue, and give this act and the special matter in evidence." See also Haywood *v.* Chambers (1822), 1 D. & R. 411. Wells *v.* Girling (1809), 4 Moore, 78. 1 B. & B. 447. Nerot *v.* Wallace (1789), 3 T. R. 17. Kayle *v.* Bolton (1795), 6 T. R. 134. But the bill is now only void between the parties. *5* & 6 W. 4. c. 41.

And if the bill is given by an insolvent debtor to his creditor to induce him to withdraw his opposition to his discharge under the Insolvent Act, the bill is equally void between the parties. Murray *v.* Reeves (1828), 2 M. & R. 423. 8 B. & C. 421. Rogers *v.* Kingston (1825), 10 Moore, 97. 2 Bingham, 441. But a note given for compounding a misdemeanour may be recovered. Drage *v.* Ibberton (1798), 2 Espinasse, 643.; even if the acceptor is in prison, convicted but not sentenced. Kirk *v.* Strickwood (1833), 1 Nev. & M. 275. 4 B. & Adol. 421.

If the holder of a promissory note appoints the maker his executor, the debt is discharged; and even an indorsement by the maker does not make any difference. Freakley *v.* Fox (1820), 4 M. & R. 22. Wonkford *v.* Wonkford (1699), 1 Salkeld, 299. Cheetham *v.* Ward (1796), 1 B. & P. 630. There are also many cases in which an acceptance is void in the hands of a person aware of the illegality of the transaction. See the head Drawer, p. 11.

A mere acceptance without delivery to the holder is insufficient to make an acceptor liable. Cox *v.* Troy (1822), 1 D. & R. 3. *5* B. & Ald. 474. An acceptor of a foreign bill may accept a bill conditionally. Julian *v.* Sholbroke (1753), 2 Wilson, 9. As when he says, "It will not be accepted until the ship with the wheat arrives;" this is an acceptance, as soon as the wheat arrives. Miln *v.* Prest (1816), 4 Campbell, 398. Or if he "cannot accept till stores are paid for," it is an undertaking to accept when the stores are paid for. Pierson *v.* Dunlop (1777), Cowper, 571.

But there must not be any restriction as to what is to be the nature of the payment, as "to pay in three good Indian bonds," or to "pay so much money and deliver a horse;" for such are neither bills of exchange or promissory notes within the 3 & 4 Ann. c. 9., Buller's Nisi Prius, 272. Jenvey *v.* Horle (1724), 2 Lord Raym. 1361. Morris *v.* Watkins, ibid. 1362. 1396. Appleby *v.* Biddle (1717), 1 Strange, 219. Or the drawee may accept by a partial acceptance as for part of the bill, as 100*l.* of a bill for 150*l.* Wagerstafe *v.* Keene (1720), 1 Strange, 214. Or he may qualify his acceptance. Gammon *v.* Schmol (1814), *5* Taunton, 344. In Sproot *v.* Mathews (1786), 1 T. R. 182., it was decided to be a question of law as to whether an acceptance is absolute or conditional.

If the drawee agrees to accept a bill on certain conditions, he is discharged if the conditions are not complied with. Mason *v.* Hunt (1779), 1 Douglas, 284. Thus the acceptor of an accommodation bill, or partly an accommodation bill, is not liable to holders for value for the full amount of the bill, but only to the sum for which the acceptance was given between them and the drawer. Darnel *v.* Wilson (1817), 2 Starkey, 166. Or the drawer's partners. Sparrow *v.* Chisman (1829), 4 M. & R. 206. 9 B. & C. 241. And in his defence the acceptor may give this in evidence. Ibid. And he may prove that the holder was aware of its being an accommodation bill, in which case he can only recover from the acceptor the amount of the balance between him and the drawer. Jones *v.* Hibbert (1817), 2 Starkey, 304. And if the holder receives part of a bill from the drawer, he can only recover the residue of the acceptor. Bacon *v.* Searles (1788), 1 H. Black. 88. But if any party to the bill pays a part of the amount, he can recover it of the acceptor as money paid to his use. Pownall *v.* Ferrard (1827), 6 B. & C. 439. 9 D. & R. 603. But if a person, for the honour of the drawer, takes up an accommodation bill, he cannot recover it of the acceptor. Exparte Lambert (1806), 13 Vesey jun. 179.

The payee may annex a condition to his indorsement, and the drawee who afterwards accepts it is bound by that condition; and if that is not performed, the property in the bill reverts to the payee, who may recover the amount of the acceptor. Roberts *v.* Kensington (1811), 4 Taunton, 30. Prevot *v.* Abbot (1814), 5 Taunton, 786. Archer *v.* Bank of England (1781), Douglass, 615.

If a drawee accept with a qualified acceptance, the holder need not receive such qualified acceptance, but may resort to the drawer as for a non-acceptance. Gammon *v.* Schmoll (1814), 1 Marsh, 80. S. C. 5 Taunton, 344. Per Chambre J.: "A man is not bound to receive a limited and qualified acceptance; he may refuse it and resort to the drawer; but if he does receive it, he must conform to the terms of it." See also Boehm *v.* Garcias (1807), 1 Camp. 425.

If a foreign bill of exchange is refused acceptance by the drawee and protested for non-acceptance, and another person accepts for the honour of an indorser, such acceptor is exonerated if the bill is not presented when due to the drawee, and protested for nonpayment. Hoare *v.* Cazenove (1812), 16 East, 391. See 6 & 7 W. 4. c. 58.

But an acceptor can, in general, only be discharged by payment of the acceptance, or an express discharge. Fentum *v.* Pocock (1813), 5 Taunton, 195. Dingwall *v.* Dunster (1779), Douglass, 235. Plack *v.* Peele, cited Douglas, 236. Lord Mansfield: "There is no doubt but the holder of a bill may discharge any of the parties."

If the drawee of a bill of exchange, or a check, promise to pay it on a certain contingency occurring, he is bound by that promise whenever that contingency occurs, if the holder in consequence retains the bill. Kilsby *v.* Williams (1822), 5 B. & Ald. 15. (Check).

Stevens *v.* Hill (1805), 5 Espinasse, 247. Israel *v.* Douglas (1789), 1 H. Black. 239. Lacy *v.* M'Neile (1824), 4 D. & R. 7. Ardpen *v.* Rowney (1805), 5 Espinasse, 254. And the money may be recovered as had and received to the use of the holder; but if the money is tendered for such bill, and the bill is not produced, the drawee is exonerated, if, before the bill is produced, he receive directions not to pay. Stewart *v.* Fry (1817), 1 Moore, 74.

But no undertaking to pay is binding without the party undertaking have funds from some of the parties to the bill, or other adequate consideration, such as forbearance to sue, &c.; which consideration must appear on the face of the undertaking. A mere "I promise to pay the bill drawn by I. S. in favour of T. P.," is clearly invalid. Morley *v.* Boothby (1825), 3 Bingham, 107. Saunders *v.* Wakefield (1821), 4 B. & Ald. 595. See also Warrington *v.* Turbor (1807), 8 East, 242. "We jointly and separately promise to guarantee a payment of 500*l.* at 5 per cent., say a bill dated 10 January, 1808." Swinyard *v.* Bowes (1816), 5 M. & S. 62. Van Wart *v.* Woolley (1824), 3 B. & C. 439. 5 D. & R. 374.

ACCEPTANCE UNDER PROTEST OR FOR HONOUR.

In the case of foreign bills of exchange, when the drawee cannot be found or refuses to accept, it is usual for some friend of the drawer or indorser, after the bill has been protested for non-acceptonce, to accept the bill; and this is usually done by writing on the bill,

"Accepted supra protest for the honour of Messrs. ——. I.S."

In these cases, the bills must still be presented to the original drawees when due; and if refused, then protested for nonpayment before they are presented to the acceptors for honour. Hoare *v.* Cazenove (1812), 16 East, 391. Mitchell *v.* Baring (1829), 10 B. & C. 4. M. & M. 381. Any person may accept for the honour of any party to the bill; but an acceptor for honour should be cautious, and make every inquiry as to the reasons for the drawee's refusal, since in case of forgery or other vital defect in the bill, he cannot come upon any of the parties to the bill.

An acceptor for honour is entitled, in case of nonpayment by the drawee, to have the bill presented to him for payment; or if the bill is "needed," that is, if it is written on the bill by any indorser, "in case of need, apply to I. S.," then such indorser is entitled to have it presented to him; which presentation, by the 6 & 7 W. 4. c. 58., may be made on the day next ensuing the day after the bill is due, and if that day is Sunday, on the following Monday.

And if the acceptor for honour or referee lives in a different town from the drawee, then it is declared by the same statute that it shall be sufficient to forward such bill for presentation on the day following the day on which it shall become due.

The person for whom the acceptance supra protest or for honour is made, is liable to the acceptor for all damages, as much as if he had given express directions to accept. Smith *v.*

Nissen (1786), 1 T. R. 269. But in suing an acceptor for honour, he must not be sued as acceptor, but on his collateral undertaking. Jackson *v.* Hudson (1810 , 2 Campbell, 447.

An acceptor is exonerated from all liability by any *material* alteration in the bill after he has parted with it; even if this alteration is made by a stranger, and the bill is in the hands of an innocent holder. Masters *v.* Miller (1793), 4 T. R. 320. S. C. 5 T. R. 367. 2 H. Black. 141. 1 Anstruther, 227.

And he may take advantage of this in a plea, that he did not accept the bill. Cox *v.* Coxwell (1835), 2 C. M. & Ros. 291.

But this alteration must be in a material part, as in the date or in the place of payment. 1 & 2 G. 4. c. 78. Mackintosh *v.* Haydon (1825), 1 R. & Moody, 362. Cowie *v.* Halsall (1821), 4 B. & Ald. 197. Tidmarsh *v.* Grover (1813), 1 M. & S. 785. Rex *v.* Treble (1810), 2 Taunton, 329. Desbrow *v.* Weatherly (1834), 6 C. & P. 758. Amount. Trapp *v.* Spearman (1800), Espinasse, 57. But the correction of an erroneous date does not exonerate the acceptor; or the insertion of a special acceptance before negotiation. Jacob *v.* Hart (1817), 2 Starkey, 45. Nor the correction of a wrong year (1822 into 1823). Brutt *v.* Picard, 1 R. & M. 37. Kennedy *v.* Nash (1816), 1 Starkey, 452. Nor the insertion of the words "or bearer," "or order." Atwood *v.* Griffin (1826), 2 C. & P. 368. S. C. 1 R. & Moody, 425.

A bill may be altered in date after acceptance, but before it is put into the indorsee's hands. Johnson *v.* Garnett (1815), 2 Chitty, 122. But not afterwards. Outhwaite *v.* Luntley (1815), 4 Campbell, 179.

An acceptor is also exonerated by the insertion in the bill of "date," instead of "sight;" and the plaintiff cannot recover upon the money counts. Long *v.* Moore (1790), 3 Espinasse, 155.

The acceptor is also exonerated if the bill is altered after it is due, although before negotiation and with the acceptor's consent. Bowman *v.* Nicholl (1794), 5 T. R. 537. S. C. 1 Espinasse, 81. For the bill requires a new stamp.

But if altered before it becomes due, with the consent of the acceptor before it is negotiated, it does not require a new stamp. Downes *v.* Richardson (1822), 1 D. & R. 332. S. C. 5 B. & Ald. 674. But in the case of cross acceptances, the alteration exonerates the acceptor, since the delivery of the cross acceptances is, in fact, a negotiation. Cardwell *v.* Martin (1808), 9 East, 190. Cowley *v.* Dunlop (1798), 7 T. R. 565.

The proof that the alteration was made before indorsement, lies with the plaintiff. Johnson *v.* Marlborough (1818), 2 Stankey, 313.

The alteration, even the striking out the acceptor's name and the substitution of a fresh agreement on the *back of* the bill, will not exonerate the acceptor. Sweeting *v.* Halse (1829), 4 Manning & Ryland, 287. The jury cannot be allowed to look at the unstamped agreement. See also Teynham *v.* Roper (1833), 6 Bingham, 561.

It is no objection to a post dated bill that it bears date pos-

terior to the death of the payee whose indorsement it bears. Passmore *v.* North (1811), 13 East, 517. Nor can any objection be taken to a post dated bill on account of the stamp, under the 55 G. 3. c. 184., being required to be larger for a bill having more than two months to run, as for 30*l.* on a two shilling stamp. Upston *v.* Marshall (1828), 3 D. & R. 198. 2 B. & C. 10. Since the value of the stamp depends upon the date on the face of the bill. Peacock *v.* Murrell (1819), 2 Stark. 558. And a holder is not bound by any defects, except they appear on the bill, or are imposed by some positive statute. A penalty, however, of 100*l.* is imposed by sec. 12. of the 55 G. 3. c. 184., for post dating bills, notes, &c., on stamps which do not cover the real term for which they are drawn.

If a bill payable at sight is *lost* or *stolen*, and afterwards gets into other hands for a valuable consideration, the holder, being ignorant of the robbery at the time of taking the bill, can recover of the acceptor. Grant *v.* Vaughan (1764), 3 Burrows, 1517. The note or check was in this form, directed to Sir Charles Asgil, a banker.

"Pay to ship Fortune or bearer, 100 pounds:"

This was decided to be a negotiable note.

And in the case Peacock *v.* Rhodes (1781), Douglass, 611., which was a case of a stolen bill payable 31 days after date, Lord Mansfield observed, "The law is settled that a holder coming fairly by a bill or note has nothing to do with the transaction between the original parties, unless perhaps in the single case (which is a hard one, but has been determined), of a note for money won at play. I see no difference between a note indorsed blank, and one payable to bearer; they both go by delivery, and possession proves property in both cases: the question of mala fides was for the consideration of the jury." See also Salkeld, 126.

And in Miller *v.* Race (1735), 1 Burrows, 453., where a stolen bank note was refused payment by the Bank of England, the court clearly held that the plaintiff, having given a valuable consideration, was entitled to recover; and in the case of a stolen banker's check, the court came to the same conclusion. Lee *v.* Newsam, 2 D. & R. N. P. C. 50. Down *v.* Halling (1825), 6 D. & R. 455. S. C. 4 B. & C. 330.

If a bill is lost, it will be well for the holder to give notice by a notary to the acceptor of the loss.

And it will be well if the acceptor, upon a bond of indemnity being offered him, furnishes to the loser another bill, or pay him the amount of the other bill when due, according to the 9 & 10 W. 3. c. 17. s. 3., which directs the *drawer* to that effect, as otherwise he may be liable to pay interest and damage sustained by his refusal.

Although he cannot be made to take a bond of indemnity by the common law, he must leave it to a court of equity to enforce the claim. Hansard *v.* Robinson (1827), 7 B. & C. 92. Exparte Greenaway (1802), 6 Vesey junior, 812. Neither can an action be maintained upon a lost bill of exchange, even if the loss did not happen until after the bill became due. Hansard *v.* Robinson, 7 B. & C. 92., overruling Glover *v.* Thompson, 1 Ryan & Moody, 403. Brown

v. Messiter (1814), 3 M. & S. 281. Nor does it alter the case if one half of the note is produced, the other half being lost. Mayor *v.* Johnson (1813), 3 Camp. 325. Lord Ellenborough: "It is usual and proper to pay upon an indemnity; but payment can only be enforced at law by the production of an entire note, or by proof that the instrument or the part which is wanting has been actually destroyed. The stolen half of this note may have immediately got into the hands of a bonâ fide holder for value, and he would have as good a right of suit upon that as the plaintiffs upon the other half."

A bill broker, when he discounts a bill under suspicious circumstances cannot recover of the acceptor: he must show that he acted with a reasonable degree of caution. Gill *v.* Cubitts (1824), 5 D. & R. 324. S. C. 3 B. & C. 466. 1 C. & P. 163.

And in an action by the owner of a lost bill against a banker, who had cashed it for a total stranger, it was held that the jury were properly directed to consider whether the plaintiff had used due diligence in apprising the public of his loss, and whether the defendant had acted with good faith and sufficient caution in receiving the bill under circumstances which could not excite suspicion in a prudent and ordinary man. Beckwith *v.* Corrall (1826), 3 Bingham, 444.

All persons in trade, whether merchants, bankers, or brokers, should be especially careful in taking of strangers either bills of exchange or bank notes of large amounts; for if it turns out that they are stolen, they will be liable to make good the loss to the loser, and it will make no difference whether they gave in exchange cash or merchandise. Down *v.* Halling (1825), 4 B. & C. 330. Stolen checks for 50*l.* Snow *v.* Peacock (1826), 3 Bingham, 406. (Bankers gave a stranger change for a 500*l.* note.) Egan *v.* Threfal (1823), 5 D. & R., 326. (A broker changed a 1000*l.* note for a person whom he knew to be in difficulties.) De Chaumetre *v.* Bank of England (1829), 9 B. & C. 208. Receiving a bank note of 500*l.* of a stranger in exchange for goods. Strange *v.* Wigney (1830), 6 Bingham, 677. (A banker changed a 100*l.* note for a stranger.) Bridger *v.* Heath (1828), Chitty on Bills, 283. (A banker changed a 200*l.* note for a stranger.)

If a lost bill can be shown to be absolutely destroyed, the acceptor is liable for the amount. Champion *v.* Terry (1822), 7 Moore, 130. Powell *v.* Roach (1807), 6 Espinasse, 76.

But if he has even expressly promised to pay a bill merely lost, without a new consideration, he is still not liable. Davis *v.* Dodd (1812), 4 Taunton, 602. Powell *v.* Roach (1807), 6 Espinasse, 76. Nor in case of a lost check can the drawer be made to pay the amount. Bevan *v.* Hill (1810), 2 Campbell, 381. See also Champion *v.* Terry (1822), 7 Moore, 130. 3 B. & B. 295.

If a bill left for acceptance is lost by, or stolen from, the drawee, he would certainly be liable to the indorsee; but if the indorsee, through his gross negligence or folly, enable a stranger to apply for, describe its marks, and get possession of it, then the acceptor is certainly not liable. Morrison *v.* Buchanan (1833), 6 C. & P. 18.

The drawee or acceptor of a bill of exchange is a competent

witness in an action against the drawer to prove that he had no effects, and thereby prevent the necessity of notice to him; for although the drawer, through his evidence, is made to pay, yet still he is liable to an action from the drawer, in which *another* witness will then be necessary to prove want of consideration. Staples *v.* Okins (1795), Espinasse, 332. Legge *v.* Thorpe (1810), 12 East, 171. 2 Campbell, 310.

If a bill of exchange dated abroad is drawn in England, the bill is void for want of a stamp, and the acceptor may call the payee and the indorser to prove the fact. Jordaine *v.* Lashbrook (1798), 7 T. R. 601.

But a bill may be filled up and accepted in London, and then transmitted abroad for the drawer's signature, without an English stamp. Boehm *v.* Campbell (1818), 1 Gow, 55. 3 Moore, 15. Smith *v.* Mingay (1813), 1 M. & S. 87.

A bill drawn in Ireland, or a blank stamp transmitted to England for acceptance, requires only an Irish stamp. Smith *v.* Mingay, 1 M. & S. 87. A bill drawn and indorsed in blank in France, and accepted in this country, cannot recover against the acceptor in this country, since by the law of France such indorsement in blank did not transfer any property in the bill. Trimmer *v.* Vignier (1834), 4 M. & Scott, 695. 1 Bingham, N. S. 151. 6 C. & P. 25.

The acceptor cannot be exonerated by the holder neglecting to present the bill when due, even if made payable at a banker's who fails in the meantime, with the money of the acceptor in his hands. Turner *v.* Haydn (1825), 6 D. & R. 5. 4 B. & C. 1. R. & M. 255. Sebag *v.* Atibol (1815), 4 M. & S. 462. 1 Stark. 79. Except specially accepted, and adding "and not otherwise or elsewhere."

The silence of the holder, even for years after the bill is due, or even any indulgence shown to any other party to the bill, will not exonerate the acceptor. Dingle *v.* Dunster (1779), Douglass, 235. Fenton *v.* Goundery (1811), 13 East, 459. Farquhar *v.* Southey (1826), 2 C. & P. 497. M. & M. 14. Lord Mansfield: "There is this difference between the acceptor and the others, that the acceptor is first liable; and to be entitled to have recourse, it is not necessary to show notice given to him of non-payment by any other person."

No time allowed, or part payment received of any other person, will exonerate the acceptor, whether the bill was an accommodation bill or not. Fentum *v.* Pocock (1813), 5 Taunton, 192. 1 Marshall, 14. Raggett *v.* Axmore (1813), 4 Taunton, 730. Kerrison *v.* Cooke (1813), 3 Campbell, 362. Or even took another of the drawer. Rolfe *v.* Wyatt (1831), 5 C. & P. 181.

No plea of a tender of payment will be an answer by an acceptor to an action, even if the drawer had mislaid the bill when the agent tendered the money, which agent afterwards failed with the amount in his hands. Dent *v.* Dunn (1812), 3 Campbell, 296. Neither will a proof of tender of the principal and interest be a defence. Poole *v.* Thumbridge (1837), 15 Law J. R. Ex. 74.

If the drawee refuses to accept, any other person may accept for the honour of the drawer. Hussey *v.* Jacob (1698), 1 Lord Raym. 87.

If an acceptance is fraudulently obtained of the acceptor, as by engaging him to accept a bill for 5*l.*, and then substituting a note for 100*l.*, in an indictment for a cheat Lord Holt would not suffer the acceptor to be a witness. The King *v.* Whiting (1698), Salkeld, 283. And yet the same judge decided, in Regina *v.* Sewell (1702), Faresley, 119., that where a woman gave a man a note to procure her the love of I. S. by some spell or charm, the woman might be exonerated as to the cheat, though it tend to avoid the note, since the nature of the thing will admit of no other evidence.

The correctness of the decision of C. J. Holt in Rex *v.* Whiting was doubted by Lord Hardwicke in Rex *v.* Bray. And in Smith *v.* Payne (1796), 7 T. R. 62., Lord Kenyon observed, "The courts had long been misled by the authority of Lord Holt in the King *v.* Whiting. Lord Mansfield has since laid it down as a rule, that the objection to a witness on the ground of future interest only went to his credit, unless the judgment could be given in evidence for him in any other suit. If the minor amount, however, is written on the bill before acceptance, then altering it is a forgery, by the 1 W. 4 . c. 66. s. 3.

If a drawee accept a forged bill, he is liable to a bonâ fide holder. Smith *v.* Chester (1787), 1 T. R. 654. Bass *v.* Clive (1815), 4 M. & S. 15. Or if he acknowledge his own signature, he cannot afterwards plead a forgery. Leach *v.* Buchanan (1803), 4 Espinasse, 226. And he is even liable if he has paid similar forgeries by the same party. Barber *v.* Gingel (1800), 3 Espinasse, 60. And if he accepts and pays a forgery, he cannot recover it back from the indorsee. Price *v.* Neal (1762), 1 W. Black. 390. 3 Burr. 1354.

If an acceptor pay a lost bill with a forged indorsement, he is liable to the real payee, at least if, as in the case of a foreign bill, a duplicate is produceable. Cheap *v.* Harley, cited in Allen *v.* Dundas (1789), 3 T. R. 127. Johnson *v.* Windle (1836), 3 Bingham, 225.

If, however, the drawee discovers the forgery on the very day he pays it, it has been more recently decided that he may recover the amount back. Wilkinson *v.* Johnson (1824), 5 D. & R. 403. 3 B. & C. 428. "Since this was done time enough to prevent the situation of any of the parties being altered." But it will not do the day after. Cocks *v.* Masterman (1829), 9 Barn. & Cress. 902. Bayley J.: "The holder of a bill is entitled to know, on the day when it becomes due, whether it is an honoured or dishonoured bill; and if he receives the money and is suffered to retain it the whole of that day, the parties who paid it cannot recover it back."

If a banker pay an altered check, he is of course liable for the difference. Hall *v.* Fuller (1826), 8 D. & R. 464. 5 B. & C. 750. But not if gross carelessness is evinced on drawing the check. Young *v.* Grote (1827), 4 Bingham, 253. 12 Moore, 484. The loss then falls upon the drawer.

If, however, an acceptor pays a bill in ignorance of his being absolved by the laches of the indorsee, he may recover it back of him. Milner *v.* Duncan (1827), 6 B. & C. 671.

A bill may be accepted by an agent factor, or by procuration, and this agent may be an infant or feme covert.

If the agent accepts for a principal, it will be well for him to say so, as, "accepted for I. S.," or "her procuration of;" otherwise the agent is personally liable, even if he is the clerk or agent of a bank. Leadbitter *v.* Farrow (1816), *5* M. & S. 345. Or cashier of a public company. Thomas *v.* Bishop (1734), Strange, 955.

But when an agent accepts a bill for his principal, there must be either an express antecedent or present authority, or subsequent consent, or it must be shown that the principal had trusted him generally with his affairs. Boulton *v.* Hillesden, Salkeld, 450.

If a creditor takes an agent's acceptance for his demand on the principal, and even renews the bill twice, being unable to get cash, the principal is not thereby exonerated, even if the agent had always abundant cash in his hands belonging to the principal to pay the debt. Robinson *v.* Reed (1829), 9 B. & C. 449. Tempest *v.* Ord (1815), Maddocks, 89. Owenson *v.* Mosse (1796), 7 Term R. 6. If, however, the drawer had his election to take cash, or the agent's bill, then the principal is exonerated. Smith *v.* Ferrard (1827), 7 B. & C. 19.

When the drawee is abroad and accepts by agent, if he continues abroad the bill, when it becomes due, must be presented for payment to the agent. Phillips *v.* Astling (1809), 2 Taunton, 206.

The holder of the bill cannot proceed against the acceptor until the bill is due. Simon *v.* Lloyd (1835), 2 C. M. & Ros. 187. Kearslake *v.* Morgan (1794), *5* T. R. 513.

A demand for acceptance and refusal must be clearly and unequivocally proved before an action will lie against the drawer. Cheek *v.* Roper (1805), *5* Esp. 175.

In foreign bills drawn so many days after sight, there appears hardly any limit to the time allowed to the holder to send them for acceptance or sighting. Mellish *v.* Rawden (1832), 2 Moore & Scott, 570. 9 Bingham, 416.; where the bill was held five months. And Goupy *v.* Harden (1816), 2 Marsh, 454. Holt, 342. 7 Taunton, 159.; where the delay was three months.

And in the case of inland bills of exchange payable after sight, the bill may be *circulated* almost any length of time unpresented for acceptance, without laches; and if the holder does not circulate it, he may keep it a reasonable time, which reasonable time is a question for the consideration of the jury. In Fry *v.* Hill (1817), 7 Taunton, 397., the jury considered a delay of four days between Windsor and London not unreasonable. Shute *v.* Robins (1827), 3 C. & P. 80. M. & M. 133.

An acceptor may show, in an action by an indorsee, that it was drawn for the plaintiff's accommodation, who promised to provide for it when due, and that he has not had any value for it from the drawer. Thompson *v.* Clubley (1836), 1 Meeson & W. 212.

An acceptor may retain money in his hands belonging to the drawer until the bill is either discharged or he receives a sufficient security. Madden *v.* Kempster (1807), 1 Camp. 12. Moorse *v.* Williams (1813), 3 Camp. 418. But he cannot retain it even under a power of attorney after the bankruptcy of the drawer. Hovill *v.* Lethwaite (1804), *5* Esp. 158.

THE PAYEE.

"Two months after date, pay to the order of A. B. —— pound.
"To E. F." "C. D.

In this bill A. B., being named as the person in whose favour the bill is drawn, is the payee, and the bill cannot be valid without his indorsement. This mode, however usual with foreign bills, is not so common a form with inland bills.

If the payee is a fictitious person, and the drawee was ignorant of the fact when he accepted it, the bill is void; but otherwise, he is liable to a bonâ fide indorsee ignorant of the fact, but not if he was cognisant of the payee being fictitious. Hunter *v.* Jeffery (1797), 2 Peak, 146.

The payee is entitled to notice of the dishonour of the bill, even if he knew that it was an accommodation bill, and the drawee insolvent. Smith *v.* Beckett (1810), 13 East, 187.

If the indorsement of the payee is forged, the acceptor cannot be sued, even by a bonâ fide holder, and a court of equity will oblige him to give it up to be cancelled; neither can the payee, by indorsing it after it has become due, give the holder a better title. Esdaile *v.* Lanauze (1835), 1 Y. & Col. 394.

CHAP. IV.

THE INDORSER — INDORSEE.

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THE INDORSER — INDORSEE.

THE indorser (from *in dorso*, upon the back), is the person who indorses the bill over to another, which other is the indorsee.

The indorser is considered by the common law, not as a principal party to the formation of the bill, but as a surety for its payment, in case of default by the acceptor and drawer, who are first liable. Smith *v.* Knox (1800), 3 Espinasse, 47. Dingwall *v.* Dunster (1779), Douglas, 236. Heylin *v.* Adamson (1758), 2 Burrows, 669. Clarke *v.* Devlin (1803), 3 B. & P. 366. Pownal *v.* Ferrard (1827), 6 B. & C. 442. Philpot *v.* Briant (1828), 4 Bingham, 720.

An indorsement must be in writing, but with a pencil will do. Geary *v.* Physic (1826), 5 B. & C. 234.

And there is no limit to the number. When the back of the bill is full of names, a piece of paper may be attached to contain more; this is called by the Frenchmen *un allonge*.

By the indorsement to a third person, all right, title, and interest is transferred, for the courts make an exception in favour of the transfer of bills of exchange, which they will not make in favour of other choses in action; that is, rights not in possession of the owner or claimer.

This willingness to give effect to the law of merchants was displayed by the courts so early as the 14th century, in the case of foreign bills of exchange; and in the 17th century, the same prin-

ciple was recognised as applying to inland bills and promissory notes.

Another great privilege attaches to a bill of exchange; it is itself internal evidence of value having been given for it, and it rarely happens that a holder has to show that he gave a valuable consideration for it.

In the case Buller *v.* Cripps (1603), 6 Modern, 29., Sir J. Holt said, "I remember when actions upon inland bills of exchange did first begin, and there they laid a particular custom between London and Bristol, and it was an action against the acceptor; the defendant's counsel would put them to prove the custom, at which Hale, who tried it, laughed, and said they had a hopeful case on't. And in my Lord North's time, it was said that the custom in that case was part of the common law of England, and the actions since became frequent as the trade of the nation did increase; and all the difference between foreign and inland bills of exchange is, that foreign bills must be protested before a public notary before the drawer may be charged, but inland bills need no protest."

An indorser must not be a feme covert. Barlow *v.* Bishop (1801), 1 East, 432. Unless the husband gave authority. Cotes *v.* Davis (1808), 1 Campbell, 485. Prince *v.* Brunette, 1 Bingham, N. C. (1835), 435. Haly *v.* Lee (1741), 2 Atkyns, 181. Or unless he is dead in law, by long absence, banishment, &c. Derry *v.* Mazarine (1693), 1 Lord Raym. 147. Carrol *v.* Blencow (1801), 4 Espinasse, 27. Corbet *v.* Poelnitz (1785), 1 T. R. 7. "The court must consider the transportation as suspending her disability."

If the bill was made to the woman before marriage, the husband must indorse it. Connor *v.* Martin (1772), 3 Wilson, 5. But an infant may indorse. Taylor *v.* Croker (1803), 4 Esp. 187. For his infancy is a personal privilege.

An indorsement may be made by procuration, agent, or attorney; but it will be well for the indorser to say that he does so for another, otherwise he will be personally liable. Executors or administrators may indorse for a deceased indorsee. Rawlinson *v.* Stone (1746), 3 Wilson, 1.

An indorser by his indorsement undertakes to pay, if the prior parties to the bill do not. The acceptance or nonacceptance of the drawee does not vary the responsibility of the indorser. Tanner *v.* Bean (1825), 6 D. & R. 338. S. C. 4 B. & C. 312.

The indorsee, however, in case of nonpayment, must endeavour to obtain the money of the drawer before he can resort to the indorser; and the drawer or his bail having paid the amount to the indorsee, the bill is finally satisfied as against all the indorsers. Hull *v.* Pitfield (1743), 1 Wilson, 46.

Bills of exchange, promissory notes, and checks on bankers, are all equally transferable from one person to another, although it is proper that such bill should be drawn as payable "to bearer," or "to order." Miller *v.* Race (1735), 1 Burrows, 452.

There are various modes of indorsement. An indorsement in blank, which is by far the most usual way, is by merely writing the name of the indorser on the back of the bill; for any other direction, as the words "pay to," may afterwards be added by the holder,

even in court. Peacock *v.* Rhodes (1781), Douglas, 614. Lord Mansfield: "I see no difference between a note indorsed blank, and one payable to bearer; they both go by delivery, and possession proves property in both cases." Vincent *v.* Horlock (1808), 1 Campbell, 442.

An indorsement in full is made, for instance, by saying "Pay I. S. or order." In that case the bill cannot be transferred further without I. S. shall indorse it. Potts *v.* Reed (1806), 6 Espinasse, 57.

A restrictive indorsement may be made by limiting the payment to some particular person; as for example, "Pay to I. S. only," or "Pay to I. S. for my use;" and if in the face of this indorsement the acceptor chooses to pay another holder than I. S., he does it at his own risk. Snee *v.* Prescot, 1 Atkins, 247. Aucher *v.* Bank of England, Douglas, 615. In this case the bill was indorsed in the Danish language: "The within must be credited to Captn. Moreton Larsen Dahl, value in account. Christiana, 17 January, 1778. — Jens Maestue."

This was discounted by the bank with a forged indorsement of Marten Dahl on it. Lord Mansfield C. J.: "A bill, though once negotiable, is certainly capable of being restrained. I remember this being determined upon argument. A blank indorsement makes the bill payable to bearer, but by a special indorsement the holder may stop the negotiability. Maestue did so here. It does not seem to me that after the special indorsement by Maestue, Dahl himself could have indorsed it over." Willes, J.: "The bank either did read, or ought to have read, the indorsement." See also Sigourney *v.* Lloyd (1828), 8 B. & C. 622.; affirmed on error in the Exchequer Chamber (1829), 5 Bingham, 525. 3 Y. & J. 220.

If the indorser says on the bill "Pay I. S.," this does not restrain the negotiability of the bill; for such an indorsement may have afterwards the words "or order" added, even in court. Edie *v.* East India Company (1768), 2 Burrows, 1216. Wilmot J.: "The custom of merchants is part of the law of England, and courts of law must take notice of it as such." But if the indorsement is, "Pay I. S. or his order for my use," that is a restrictive indorsement. Sigourney *v.* Lloyd (1828), 3 Manning & Ryland, 58. Edie *v.* E. In. Company (1768), 2 Burrows, 1227. 1 W. Black. 295.

If an indorser in indorsing the bill alters the amount to be paid to the indorsee, the indorsee cannot maintain an action for part, as if a bill is drawn for 100*l.*, and indorsed to an indorsee for 95*l.*, without he shows that the other part is satisfied. Hawkings *v.* Cardee (1698), Lord Raym. 361. Holt C. J.: "Where a man's contract has subjected him only to one action, it cannot be divided, so as to subject him to two."

It has been decided over and over again, that the indorser of a bill of exchange is in almost every respect a new drawer upon the original drawee. Lake *v.* Haynes (1736), 1 Atkyns, 281. Lord Hardwicke: "He considered every indorser as a new drawer." Heylin *v.* Adamson (1758), 2 Burrows, 669. Lord Mansfield

and tota Curia: "Between the indorser and the indorsee it is a *new* bill of exchange, and the indorser stands in the place of the drawer. The law is exactly the same, and fully settled upon the analogy of *promissory notes* to bills of exchange. While a promissory note continues in its original shape of a promise of one man to pay another, it bears no similitude to a bill of exchange; when it is indorsed the resemblance begins, for then it is an order from the indorser upon the maker of the note (his debtor by the note) to pay to the indorsee: this is the very definition of a bill of exchange."

The mere transfer of a bill without indorsement does not render the transferer liable on the *bill*, even if he has written some words upon it. Vincent *v.* Horlock (1808), 1 Campbell, 442.

Yet, if a bill is transferred for a valuable consideration without being indorsed, in case of nonpayment the transferer is still liable for the debt. Ward *v.* Evans (1701), 2 Lord Raym. 928. Holt C. J.: "Paper is no payment where there is a precedent debt; for when such a note is given in payment, it is always intended to be aken under this condition, to be payment if the money be paid thereon in convenient time."

A debtor may bar a creditor by stipulating at the time the bill is transferred that the creditor takes the bill, with all its faults, in full satisfaction for the debt; but even then, if the debtor knew at the time of transfer that the bill was of no value, the creditor may sue him on the original debt and bill thus transferred. Fenn *v.* Harrison (1790), 3 T. R. 757. "Kenyon C. J.: "If he knew the bill to be bad, it would be like sending out a counter into circulation, to impose upon the world instead of the current coin."

An indorser is exonerated if the bill is not presented when due. Or if presented for either acceptance or payment and dishonoured, he has not notice, even if the acceptor and drawer are insolvent, and he is aware of the fact. Bignold *v.* Breereton (1836), 15 Law J. R. in Chan. 17. Walwyn *v.* St. Quentin (1797), 2 Espinasse. Derbyshire *v.* Parker (1805), Tindal *v.* Brown (1786), 1 T. R. 167. And this notice must clearly express the presentment and dishonour, and be from a party to the bill, or his deputed agent. Solarte *v.* Palmer (1834), 1 Scott, 2. From a stranger will certainly not be a sufficient notice.

An indorser is also exonerated if the bill is altered materially, either after it becomes due, Bowman *v.* Nicholls (1794), 5 T. R. 537.; if it is rendered of shorter date, as by altering the 31st into 21st, Masters *v.* Miller (1793), 4 T. R. 320.; or if it is paid by any prior indorser. Gomez Serra *v.* Berkley (1743), Hull *v.* Pitfield, 1 Wilson, 46.

In case an indorser loses a bill, or is robbed of it, he should give notice to the acceptor, drawer, and all the previous indorsers; if he does not, and the acceptor pays the bill, even to the robber, the loser has no remedy. Peacock *v.* Rhodes (1781), 2 Douglas, 683. And if the bill gets into the hands of a bonâ fide indorsee (Lee *v.* Newman, 2 Dowling & Ryland's N. P. C. 50. Down *v.* Halling (1825), 4 B. & C. 330. 2 C. & P. 11.), he has no remedy. If, however, the holder loses a bill transferable only by indorsement,

he is pretty secure; because whoever gets possession of it by a forged indorsement, even if he did not know of the forgery, cannot sue any of the parties; and if any party pay the bill, the loser can still recover, without producing the bill. Long *v.* Baillie (1805), 2 Campbell, 214. And the loser will, in a criminal case, be admitted to prove that the signature is a forgery; and it makes no difference if the person who forges is of the same name as the real indorsee. Mead *v.* Young (1790), 4 Term Reports, 28. Cheap *v.* Harley, cited in Allen *v.* Dundas, 3 T. R. 127. And it is as much a forgery to indorse fictitious as real names on a bill. Rex *v.* Webb (1819), 3 B. & Brod. 229. Russell & Ryan, C. C. 405. Tatlock *v.* Harris (1789), 3 T. R. 174.

STEALING BILLS.

By the 7 & 8 Geo. 4. c. 29. s. 5., the stealing of a foreign or inland bill of exchange or promissory note is a felony, and is punishable as though the thing stolen was a chattel of equal value.

But stealing a cheque on a banker payable to W. F. J., and not made payable to bearer, was not considered within the meaning of the statute. Rex *v.* Yates, Car. C. L. 273—333. (4 Ryland's Blackstone, 234.)

It is essential in all prosecutious for forgery to show that it was done for the purposes of fraud.

To indorse in a fictitious name is a forgery. Rex *v.* Marshall (1804), R. & R. C. C. 75. Although such a person never existed. Rex *v.* Bollond, 1 Leach, C. C. 83. Altering a bill from a lower to a higher sum is a forgery, even if the bill is paid and reissued. Rex *v.* Teague (1802), R. & R. C. C. 33.

Where a clerk embezzled a bill of exchange which his master had directed him to encolse and transmit by post to a friend, this is larceny. 2 East, P. C. 565. 2 Ch. C. L. 917. (4 Ryland's Blackstone's Commentaries, 230.)

If a bill payable to I. S.'s order, is delivered by mistake to another I. S.; if the wrong I. S. indorses it and pays it away, it is a forgery. And in an action against the drawer or acceptor, the defendant may show that the I. S. who indorsed was not the I. S. named in the bill. Mead *v.* Young (1790), 4 Term Reports, 28. Lord Kenyon, however, dissenting from the three puisne judges.

If the indorsee of a bill fraudulently obtained by the first indorsee sue the drawer, it is no defence that the bill was taken under such circumstances as ought to have excited the suspicion of any prudent man that the bill had not been fairly obtained; the defendant must show gross negligence. Crook *v.* Jadis (1834), 5 B. & Adol. 909. Backhouse *v.* Harrison (1834), 5 B. & Adol. 1098.

If a bill is lost by the post office, the loser has no remedy against the Post Master General. Lane *v.* Cotten (1700), 1 Salkeld, 17. Whitfield *v.* Lord Le Despenser, Cowper (1778), 754. If the law were otherwise, it would open the door to endless frauds.

When bills are indorsed after they are over due, the indorsee is liable to great suspicion; and it behoves him to use every pre-

caution, and make every possible inquiry, for he takes the bill with all its faults on the credit of the indorser, and must stand in the same situation as the holder when the bill first became payable. This rule does not, however, apply to cheques. Rothschild *v.* Corney (1829), 9 B. & C. 388.

By the 17 G. 3. c. 7., an over due bill under *5l.* cannot be indorsed.

And when a bill is once paid by the acceptor, it cannot be indorsed so as to vest a right of action in a third person. Bishop *v.* Hayward (1790), 4 T. R. 470. Gomez Serra *v.* Berkley (1743); and Hull *v.* Pitfield, 1 Wilson, 46.

But if only part of a bill is paid, then for the unpaid part it may be indorsed over; but in an action against the acceptor, the plaintiff must show that the unclaimed portion is paid. 1 Salkeld, 65.

The holder of a bill is not obliged to present for *acceptance* a bill drawn payable after *date;* but it is otherwise if it is payable after sight. It is sufficient to present it for payment when due, even if the drawee has died in the interim, and his representatives are ignorant of the existence of the bill. Phillpott *v.* Bryant (1827), 3 C. & P. 244.

If the indorsee presents the bill for acceptance, and the drawee refuses to accept, the holder should give immediate notice to the drawer; and the attempt should always be made, although the drawer be unknown or absconded, as by inquiry of prior indorsers, or at the late residence of the drawer. Walwyn *v.* St. Quentin (1797), 2 Espinasse, 516. S. C. 1 B. & P. 652.

If the indorsee receives twopence of the acceptor as part payment, the drawer is exonerated, without he gives notice that he holds him responsible for the remainder. Tassell and Lee *v.* Lewis, 1 Lord Raymond, 743.

And he must not give the acceptor time; "for it is to the advantage of the drawer and indorser that as much should be received from others as may be." Buller's Nisi Prius, 271.

If the bill is accepted for the accommodation of the drawer, giving the acceptor time does not exonerate the drawer; but if it was for the accommodation of the acceptor, then giving him time exonerates the drawer. Hill *v.* Read, Dowling & Ryland, N. P. C. 26. Collett *v.* Haigh (1812), 3 Campbell, 281.

If the indorsee gives time to the acceptor, all the subsequent indorsers are exonerated. Gould *v.* Robson (1807), 8 East, 577. But if he gives time to an indorser, he thereby only exonerates all the *subsequent* indorsers to the indorser thus favoured; but all prior indorsers to the indorser thus allowed time are still liable, even if a subsequent indorser has been arrested and let out of gaol by the holder.

And there is good reason in this, because the subsequent indorsers might have had an opportunity of applying to the favoured party, which the earlier indorsers could not. Smith *v.* Knox (1800), 3 Espinasse, 46.

DISCOUNT AND INTEREST ON BILLS OF EXCHANGE.

The discounter of a bill is only entitled to take five per cent. on bills or promissory notes having more than three months to run.

The discount, however, he may retain out of the amount of the bill, although, strictly, this is more than five per cent.; for instance, in discounting a bill of 100*l.* for twelve months, the discounter may retain five pounds, being the interest of 100*l.* for a year, although this is, in fact, too much by five shillings, being a year's interest on five pounds. Lloyd *v.* Williams (1771), 3 Wilson, 250. Marsh *v.* Martindale (1802), 3 B. & P. 155.

It is usual with country bankers to take five shillings per cent. in addition to the legal interest, on all bills not payable at their own office, for postage and other expenses. Auriol *v.* Thomas (1787), 2 T. R. 52. Grose J.: "The line which has been taken is, that if the sum charged be not a colour or a screen for usury, but is only fair and reasonable, it ought to be allowed."

But this doctrine of allowances for expenses does not apply to other persons not bankers. Hammet *v.* Yea (1797), 1 B. & P. 145.

And if the usurious interest is added to the bill, the offence is not completed until the money is paid. Maddock *v.* Hammet (1797), 7 T. R. 184.

But if an acceptor pays his bill before it is due, deducting a greater sum than the interest for the time would amount to, that has been held not to be usury, as it is only the anticipation of the payment of a debt, and not the loan of money. Barclay *v.* Walmsley (1803), 4 East, 55. This decision, apparently, opens a wide door for usury by means of cross acceptances at long date, one of which the real lender and acceptor might then purchase of the borrower.

I would advise the usurious dealer, however, not to flatter himself with such an erroneous conclusion. No device, no scheme, however apparently plausible, or hidden, or intricate, will blind the Court, if the transaction is bottomed in usury: it is the real intention of the parties, as disclosed by the evidence, which will alone be regarded.

By the 3 & 4 W. 4. c. 98. s. 7., any amount of discount may be taken for bills not having more than three months to run: the usury laws no longer apply to them, or to warrants of attorney given to secure payment of them. Connop *v.* Meaks (1834), 2 Adol. & El. 326.

There is no doubt that interest is recoverable on a bill from the day when it is payable, whether it is stated to bear interest or not. Robinson *v.* Bland (1760), 2 Burrows, 1076. Walker *v.* Barnes (1813), 5 Taunton, 240.; from the day when the drawer receives notice of dishonour. But to entitle the holder to interest, damages, &c., he should have the bill protested. By the 6 G. 4. c. 16. s. 58., interest on bills is proveable under a commission of bankruptcy.

But still, whether the bill is protested or not, the bearer at com-

mon law is entitled to recover interest of the drawer. Windle *v.* Andrews (1819), 2 B. & Ald. 701.

EXPENSES ON BILLS.

The expenses of noting and protesting are the only legal expenses recoverable by the holder of a bill of exchange against an acceptor. An indorser, who has to provide for the bill, may charge a reasonable sum for exchange, provision, postage, and re-exchange. Mellish *v.* Simeon (1794), 2 Hen. Black. 378.

In bills returned from the East Indies, it has been usual to allow ten shillings per pagoda for all expenses. Auriol *v.* Thomas, (1787), 2 T. R. 52. And from Pennsylvania to Europe, twenty per cent. is allowed in case of non-payment, in lieu of all expenses. Francis *v.* Rucken, Amb. 622.

Although, under the Act of 3 & 4 Ann. c. 9., the holder of a bill who omits to protest it for non-payment loses his interest, yet still he is entitled to recover interest at common law. Windle *v.* Andrews (1819), 2 B. & Ald. 701.

The omission of a protest for non-acceptance or non-payment on a foreign bill of exchange exonerates the indorsees and the drawer from all liability. But the omission of a protest on an inland bill only exonerates the parties to the bill from interest. Rogers *v.* Stephens (1788), 2 T. R. 718.

This protest in the case of a foreign bill is absolutely necessary; and no proof of notice, or noting, or by witnesses, or any other mode will be sufficient. Orr *v.* Maginnis (1806), 6 East, 359. But if after this omission to protest for non-acceptance the holder pays the bill away, an innocent subsequent indorsee may present and protest for non-acceptance, and recover of all the parties. Dunn *v.* Keefe (1815), 6 Taunton, 304. 1 Marshall, 613. 5 M.& S. 282.

In Yates *v.* Freckleton (1781), Douglas, 600., the payment of a debt on a promissory note to the agent of the plaintiff's attorney, was held not to be a discharge of the debt.

"The Court were clear that an agent employed to sue was not therefore authorised to receive payment." — "If it had been meant that he should also, in that case, receive the money, the note would have been left in his custody."

Payment of a bill must be in money: an agent employed to receive a bill certainly cannot receive goods for it. Howard *v.* Chapman (1831), 4 C. & P. 504. Ward *v.* Evans, 2 Lord Raym. 930.

If a bill is paid by a draft on a banker, the holder must not give up the bill till the draft is paid; for by the receipt of the draft the indorsers and drawer of the bill will be exonerated, even if the draft is not paid. Bishop *v.* Chitty (1743), 2 Strange, 1195. Russell *v.* Hankey (1794), 6 T. R. 12. Powell *v.* Roach (1807), 6 Espinasse, 76. And they are equally exonerated by his taking the banker's notes in exchange for the check. Vernon *v.* Bouverie (1683), 2 Shower, 296.

If the drawee pays an acceptance or check before it is due other than to the real owner of it, he is liable to repay the amount to the

person who lost it. Da Silva *v.* Fuller (1776), Selwyn Cases, 238. Chitty on Bills, 286.

When partial payment is made on a bill, the amount of the payment, and of what party received, should be entered on the bill, otherwise the payer may be liable to pay the amount over again to a bonâ fide holder, and the Court will deem the money as paid by the acceptor, if it does not appear otherwise on the bill. Cooper *v.* Davis (1795), 1 Espinasse, 463.

By the 43 G. 3. c. 126. the party paying the bill may demand a receipt; but the receipt may be, and is usually, written on the back of the bill, and it need not be on a stamp.

And when any person is obliged to pay a bill who intends to recover it of any of the other parties, it will be very desirable that he omits not to take this receipt. Mendez *v.* Cameroon, 1 Lord Raym. 742.

When a bill is dishonoured, either in acceptance or payment, the holder should give notice to the drawer and indorsers by the first post, because the Court will require that in giving his notices he uses all regular and necessary diligence. See antè, p. 19. No circumstances will render this notice "of presentation and dishonour" needless. Bignold *v.* Breereton (1836), 15 Law J. R. Chan. 17.

The noting for non-payment must be on the day when the bill is payable; the protest may be drawn up afterwards. Boulager *v.* Talleyrand (1797), 2 Espinasse, 550.

The same general rules which apply to bills of exchange apply to promissory notes.

BANKERS' NOTES.

Bank notes payable on demand differ from bills of exchange, and are not usually indorsed. In Miller *v.* Race (1735), 1 Burrows, 452., Lord Mansfield remarked, "They are *not* goods, nor securities nor documents for goods, nor are they so esteemed; but are treated as money, as cash, in the ordinary course and transaction of business by the general consent of mankind, which gives them the credit and currency of money, to all intents and purposes: they are as much money as guineas themselves are, or any other current coin that is used in common payments as money or cash: they pass by a will which bequeaths all the testator's money, as cash; and are never considered as securities for money, but as money itself."

The bankers of London were originally goldsmiths also; and when after the Restoration in 1660, they began to issue their promissory notes, payable on demand, these were called "Goldsmiths' Notes." These, from their convenience, were encouraged by the merchants, although opposed by the courts of law, Lord Holt being very bitter against them. Buller *v.* Crips (1703), 6 Mod. 29 And it was not until 1704, that by the act of the 3 & 4 Ann. c. 22. they were placed on the same footing as other promissory notes. However common in the country, in London they are almost confined to those of the Bank of England. Being payable on demand,

they are considered as cash. Owenson *v.* Moore (1796), 7 T. R. 64. And pass by delivery. They may, however, be indorsed, and then become similar to bills of exchange, and the indorser is responsible. They are otherwise subject to the same rules as other promissory notes. Brown *v.* Harraden (1791), 4 T. R. 149. Hill *v.* Lewis (1708), 1 Salkeld, 132.

The holder of a bank note, it is now decided, has the whole of the banking hours of the day after he received it to present or forward it for payment'; if he retains it after that period, he cannot return it to the previous holder. Camidge *v.* Allenby (1827), 6 B. & C. 373. Gillard *v.* Wise (1826), 5 B. & C. 134. Robson *v.* Bennett (1810), 2 Taunton, 388. James *v.* Houlditch (1826), 8 D. & R. 40.

If the holder of a bank note, however, intends to resort to the last holder, he should present his note for payment at the banker's office *where it was issued*; otherwise he cannot prove a tender for payment. Bowes *v.* Howe (1813), 5 Taunton, 30. 16 East, 112. And he should give notice of the demand, and non-payment, to all the parties to whom he means to resort for payment.

SUING ON A BILL.

If any party whose name is on the bill is arrested, that does not discharge the rest, for the arrest does not satisfy the bill; it is a mere security for the payment of it. 5 Rep. 85. "The execution of the body is no satisfaction, but a gage for the debt." 4 H. 7. 9.

In an action brought against one or all the indorsers of a bill, either of them can stop further proceedings by paying the debt and costs in that particular action; but if the acceptor is sued, he can only stop proceedings by paying not only the original debt, but the costs incurred in all the actions which may have been brought against the drawer and indorsers. Smith *v.* Woodcock (1792), 4 T. R. 691. Golding *v.* Grace (1771), 2 Blackstone, 749.

If the indorsee sue the acceptor, and the defendant proves that there was originally no consideration for the bill, the plaintiff must then prove that either he, or some previous indorser, gave value for it. Thomas *v.* Newton (1827), 2 C. & P. 606.

In an action against a drawer of a bill payable after date, it is not necessary to aver acceptance, or notice of a refusal to accept; proof of presentation for payment will be sufficient.

If the bill is accepted, payable at a particular place, and the acceptor dies before the bill becomes due, presenting the bill at the specified place is sufficient. Philpott *v.* Bryant (1827), 3 C. & P. 244.

PROTEST FOR NON-PAYMENT.

By the 9 & 10 William 3. c. 17. the form of the protest *under a fair written copy of the bill of exchange* is as follows: —

"Know all men that I, A. B., on the day of at the usual place of abode of the said have demanded payment of the bill of the which the above is the copy,

which the said did not pay; wherefore I the said do hereby protest the said bill. Dated this day of ."

This protest the act directs to be made by a notary public, or in the absence of such notary public, by some substantial person in the presence of two or more credible witnesses.

The charges for making the protest the act limits to sixpence, and further directs a copy of it to be served within 14 days upon the person of whom it was received.

An indorsee is bound to give notice of non-payment or non-acceptance to the indorsers, even if the drawer or acceptor, or both, are insolvent, or become bankrupts. Esdaile *v.* Sowerby (1809), 11 East, 114. Staples *v.* Okins (1795), 1 Esp. N. P. C. 333. Nicholson *v.* Gouthit (1796), 2 H. Black. 609. Whitfield *v.* Savage (1800), 2 B. & P. 277. Clegg *v.* Cotton (1800), 3 B. & P. 239. Russell *v.* Langstaffe (1780), Douglas, 515. Warrington *v.* Furber (1807), 8 East, 245. Bignold *v.* Breerton (1836), 15 Law J. R. 17.

And the notice must express the fact of the bill being presented and dishonoured: a mere demand of payment will not suffice. Solarte *v.* Palmer (1834), 1 Scott, 2.; confirmed by the House of Lords, C. & F. 93. Hartley *v.* Case, 4 B. & C. 339. 6 D. & R. 505. It will not do to say "It has been returned unpaid." MS. Boulton *v.* Welch, C. B. E. T. 1837.

If he omits this notice, the indorsers and drawer are exonerated; but if he succeeds in recovering the amount of a prior indorser, who was ignorant of the laches of the indorsee, such indorser must bear the loss. Roscow *v.* Hardy (1810), 12 East, 434.

By the 6 & 7 W. 4. c. 58. it is provided, that in cases of acceptances for honour, or references "in need," it shall not be necessary to present such acceptances to the acceptors or referees until the day after such bills become due; or the day after that, if such day is Sunday, Good Friday, Christmas, or a General Fast Day; and that if the acceptors for honour live in a different place from the drawee, then it shall not be necessary to forward the bill to them until the day after it is due and been refused payment.

The holder of a bill cancelled by mistake can recover against prior indorsers. Raper *v.* Birbeck (1812), 15 East, 17. And a banker may certainly return a cheque cancelled by mistake. Fernandez *v.* Glynn (1807), Camp. N. P. C. 426. note.

The holder of a bill is entitled to notice of non-payment on the very day the bill is due. Cocks *v.* Masterman, 4 M. & R. (1829), 676. Even in case the bill is a forgery, and paid by mistake. Id. 9 B. & C. 902.

If a bill is accepted payable at a particular place, it is necessary, *if interest is sought to be recovered*, to prove the presentation at that place. Phillips *v.* Franklin (1820), 1 Gow. N. P. C. 196.

The holder is entitled to avail himself of a notice given by any prior indorser to the defendant. Chapman *v.* Reeve (1836), 3 Adol. & El. 193., overruling Tindal *v.* Brown (1786), 1 T. R. 167. 2 T. R. 186.

CHECKS ON BANKERS.

Checks on bankers must be for the payment of money, and not *money in bills*, and must not be issued farther than ten miles from the bankers', and must not be post dated (9 Geo. 4. c. 49.) without being on a bill stamp, under a penalty of one hundred pounds.

The holder of a check is allowed one clear day to present the check, or forward it for presentation; after that time, if he holds it it is at his own risk. The drawer is exempted from all loss in case of the failure of the banker. Robson *v.* Bennett (1810), 2 Taunton, 388. Williams *v.* Smith (1819), 2 B. & Ald. 496. But if the banker fails before the next day is expired after the check was received, then the drawer is liable. Ibid. Richford *v.* Ridge (1811), 2 Campbell, 537.

The law of checks is in general the same as that of bills of exchange.

If a banker pays a suspicious-looking check, Scholey *v.* Ramsbottom (1810), 2 Campbell, 485., or an altered or forged check, he is liable to the loss. Hall *v.* Fuller (1826), 8 D. & R. 464. 5 B. & C. 750. But if the drawer is grossly careless in drawing the check, then the banker is exonerated. Young *v.* Grote (1827), 4 Bingham, 253. 12 Moore, 484.

And if the banker discovers the forgery the day he receives it, he may certainly recover the amount of the party of whom he received it. Wilkinson *v.* Johnson (1821), 5 D. & R. 408. But it will not do the day after. Cocks *v.* Masterman (1829), 9 B. & C. 902.

If a check is cancelled by mistake, it may be returned any time before five o'clock on the day on which it was received. Fernandez *v.* Glyn (1807), 1 Campbell, 426.

In the case of *stale* (ante-dated) checks, although the title of the holder is not invalidated by the very fact of their being some days standing, yet the circumstance is such as the judge will desire the jury to consider when they are considering whether the party took the checks under circumstances which ought to have excited the suspicion of a prudent man. Down *v.* Hallen (1825), 6 D. & R. 455.

PAYMENT IN BILLS.

A bill is no payment of a debt. Burden *v.* Halton (1827), 4 Bing. 454. 3 C. & P. 174. Even a judgment on a bill without satisfaction, is no defence. Tarlton *v.* Alhusen (1834), 2 Adol. & E. 32., overruling Drake *v.* Mitchell (1833), 3 East, 251. Owenson *v.* Morse (1796), 7 T. R. 64. But in an action the bills must be shown to be unpaid. Hebden *v.* Hartshink (1801), 4 Esp. 46. If the bill is lost, however, then the debt shares the same fate. Woodford *v.* Whiteley (1830), 1 M. & M. 517. An offered indemnity does not mend the matter. Ibid.

But if the bill has not been indorsed by the drawer, then the acceptance is no defence in an action for goods sold. Rolt *v.*

Watson (1826), 12 Moore, 82. 4 Bingham, 273. But if the holder alters the date, or otherwise vitiates the bill, then the debt is discharged. Alderson *v.* Langdale (1832), 3 B. & Adol. 660. If the debtor is offered a check on a banker or cash, and chooses a check, non-payment of the check by the banker's failure does not exonerate the debtor. Everitt *v.* Collins (1811), 2 Campbell, 515.

But if the bill is on a wrong stamp, it is no payment. Ruff *v.* Webb (1794), 1 Esp. 129. Wilson *v.* Kennedy (1795), 1 Esp. 245. Tyte *v.* Jones (1788), 1 East, 58. Wilson *v.* Vysar (1812), 4 Taunton, 288.

If a bill is remitted for a specific purpose, the person who receives it, even if a creditor, cannot apply it to another purpose. Buchanan *v.* Robinson (1829), 9 B. & C. 738. 4 M. & R. 593.

A. bought of B. 2000*l.* worth of mahogany, to be paid in bills, at three months. When B. applies to A. for the bills A. gives B. a check upon his banker, "Pay B. in bills at three months 2000*l.*" B. pays this into his bankers' hands (who are also A.'s bankers); but, instead of taking bills, has the amount transferred from A.'s account to B.'s. The banker stops payment. B. cannot recover the 2000*l.* of A. Bolton *v.* Richard (1795), 6 T. R. 139.

If a banker presents a bill for a correspondent to the acceptor for payment, and the acceptor gives him in payment a check upon a banker, which check is dishonoured, the presentor is not liable for negligence in giving up the bill, since it was proved to be the general custom among London bankers. Russell *v.* Hankey (1794), 6 T. R. 12. But the parties to the bill are certainly exonerated. Powell *v.* Roach (1807), 6 Espinasse, 76.

If goods are paid for by a bill indorsed by the vendee, which is afterwards lost, the vendor can neither recover the amount of the goods or of the bill of the buyer. Champion *v.* Ferry (1822), 3 B. & B. 295. Davis *v.* Dodd (1812), 4 Taunton, 602. Dangerfield *v.* Wilby (1803), 4 Esp. 159. And Exparte Greenaway (1812), 6 Vesey, jun. 812.

In some cases a bill is deemed payment. Darrach *v.* Savage 1 Shower (1690), 155. The plaintiff kept the bill drawn on a London merchant for two years, without either demanding it of the drawee or returning it to the drawer. L. C. J. Holt held that such a note should be deemed payment. And if a bill is taken in full satisfaction or discharge of another, the first does not revive if the second is not paid. Sard *v.* Rhodes (1836), 3 Cromp. M. & R. 153.

The statute of limitations extends to bills of exchange, even if defendant was beyond seas. Cheveley *v.* Bond (1691), 1 Shower, 341.

If a vendor of goods and indorser makes the bill his own by laches, or by a material alteration, the debt shares the same fate: he can recover neither against the drawer. Alderson *v.* Langdale (1822), 3 B. & Adol. 660. But the drawer may, against the acceptor. Atkinson *v.* Hawdon (1835), 2 Adol. & E. 629.

But if the goods are paid for in bills which are dishonoured, the seller may proceed immediately for goods sold and delivered, provided the bills are not in the hands of a third party. Hickling

v. Harding (1812), 7 Taunton, 312. Burden *v.* Halton (1828), 4 Bingham, 45. Karslake *v.* Morgan (1794), 5 T. R. 513. And the same remarks apply if he has taken a promissory note without the buyer's indorsement, in which case he need not prove presentment to the maker. Godwin *v.* Coates, 1 Moody & Rob. 221. Or even that it is on a legal stamp. Cundy *v.* Marriot (1831), 1 B. & Adol. 696.

PLEDGING BILLS.

A person who is entrusted with a bill to get it discounted cannot pledge it. Haynes *v.* Foster (1833), 4 Tyrwhitt, 66. And yet, "in general, a person who advances money on the deposit of bills has by law a lien on them against the owner, although the party making the deposit may have no authority to pledge them; but the rule is subject, we think, to this condition, that the party with whom the bills are pledged is ignorant of the limited authority of the person making the pledge, and has no reason to suspect that such authority is of a restricted character." Per Lord Lyndhurst, Ibid.

Neither can a factor or agent pledge goods of his principal, as a security for any bills he may have accepted for his principal, without he shall have paid such bills when due. 6 Geo. 4. c. 94. s. 8. And if he does, he is guilty of a misdemeanour, and liable on conviction to fourteen years' transportation, or fine and imprisonment. 7 & 8 Geo. 4. c. 29. s. 51.

BANKRUPTCY CASES.

PROMISSORY NOTE OR CHECK.

The holder of a bill of exchange for a subsisting debt, even if not yet payable, may be a petitioning creditor under a fiat of bankruptcy. 6 G. 4. c. 16. s. 15. Exparte Douthat (1820), 4 B. & Ald. 67. Moss *v.* Smith (1808), 1 Camp. 489. Glaiser *v.* Hewer (1798), 7 T. R. 498. But not a mere indorsee. Brett *v.* Levett (1810), 13 East, 218. But if an acceptor on an accommodation bill, before an act of bankruptcy, pays the amount after an act of bankruptcy to the indorser, he is not thereby qualified as a petitioning creditor. Exparte Holding (1821), 1 Glyn & J. 97. The bill drawn by the bankrupt must be proved to have been indorsed, however, to the petitioning creditor, before the commission is sued out. Rose *v.* Rowcroft (1815), 4 Camp. 245. Dixon *v.* Evans (1794), 6 T. R. 59. Or indorsed or accepted by the bankrupt. Cowie *v.* Harris (1827), M. & M. 141.

It is necessary, in cases of a mere indorsee of a bill of exchange being petitioning creditor, to prove the non-payment by the acceptor. Giles *v.* Powell (1826), 3 C. & P. 259. If by a dis-

honoured check, the indorser must prove he has paid it himself, if it has been returned to him. Bleasby *v.* Crossley (1826), 3 Bingham, 430. 11 Moore, 327. 2 C. & P. 213. An indorsee, however, may prove under the commission. 6 G. 4. c. 16. s. 51.

In receiving his dividend, however, on a bill not due, five per cent. per annum must be deducted for the time the bill has to run.

And if an acceptor of an accommodation bill not due has in his possession another bill drawn or accepted by the bankrupt by way of security for the first bill, such second bill may be proved under the commission. Smith *v.* Gale (1797), 7 T. R. 366. Rolfe *v.* Caslon, 2 Hen. Bla. 570. Holmer *v.* Viner (1794), 1 Espinasse, 134. Buckler *v.* Buttivant (1802), 3 East, 72. Hoale *v.* Baxter, ibid. 180. The assignees, however, may reserve the dividend until the accommodation bill be paid.

Upon a bill *drawn before*, even if indorsed after the drawer had committed an act of bankrupty, a commission of bankruptcy may be sued out. Exparte Thomas (1747), 1 Atkyns, 73.

After a secret act of bankruptcy an indorsee cannot set off against the bill any demand which the assignees of the bankrupt may have upon him. 4 G. 4. c. 16. s. 50. Marsh *v.* Chambers (1745), 2 Stra. 1284. Grove *v.* Dubois (1786), 1 T. R. 114. Dickson *v.* Evan (1794), 6 T. R. 57. Exparte Hale, 3 Ves. jun. 304. Hankey *v.* Smith (1789), 3 T. R. 507.

If A., B., and C. are parties to a bill for 100*l.*, and A. become a bankrupt, and C. receives five shillings in the pound, he can only then, in case of B. also becoming bankrupt, prove for 75*l.*; but if B., become a bankrupt before he has received the dividend, or a dividend been declared, then he can prove for the 100*l.*, and receive the dividend under both commissions for the full amount. Stock *v.* Mawson (1798), 1 B. & P. 289. In Exparte Marlar and Others, 1 Atkyns, 150., Lord Hardwicke decided that a discounter, who on a bill deducts the five per cent. discount, is still entitled to prove for the full amount of the bill, without deducting the retained discount; but that he was not entitled to prove for interest due since the bill became payable.

When a bill is proved by the holder, and a dividend declared, the assignees cannot then, on demand of the dividend on the bill, set up as a set off any debt due from the holder to the bankrupt's estate. Brown *v.* Bullen (1780), Douglas, 392. Lord Mansfield: "We are all of opinion that the direction was right; that the action (against the assignees) was maintainable; and that after a debt is liquidated before the commissioners, it cannot be litigated but by an application to the Great Seal."

If the drawer of a bill send goods or bills to the acceptor for the purpose of paying the bill when it becomes due, not knowing at the time that the acceptor was a bankrupt, the assignees or the acceptor cannot appropriate the goods or bills to the purposes of the estate. Tooke *v.* Hollingsworth (1793), 5 T. R. 215. (in this case *eight* guineas were remitted). And in Exparte Dumas, before Lord Hardwicke (1752), 1 Atkyns, 232., it was determined that if the drawer of a bill of exchange remits to the drawee

another bill, with instructions that the drawee shall enter it to a particular account, and keep it in his possession for that purpose, then if the drawee becomes a bankrupt the drawer is entitled to have his bill restored.

Part of some bills, however, being discounted before the remainder came into the hands of the assignees, the chancellor decreed that only the remaining bills should be restored.

But to entitle the person who remits to recover of the assignees of the bankrupt, it must clearly appear that the bills or goods remitted were for the *especial purpose* of paying the bills becoming due, and not to be entered to a general account. Bent *v.* Puller (1794), 5 T. R. 494.

If a banker or other person pay a bankrupt's acceptance or draft before he has notice of the bankruptcy, the assignees cannot recover the amount of him. Vernon *v.* Hankey (1787), 2 T. R. 113. Wilkins *v.* Casey (1798), 7 T. R. 711. Foxcroft *v.* Devonshire (1760), 1 H. Black. 193. But after notice the payer is clearly responsible; and notice to a bank is notice to its branches, if received in time to advise their branches by post. Willis *v.* Bank of England (1835), 5 Neville & M. 478.

ENTERING SHORT.

When bills are paid into a banker's hands to receive the amount when due, this is what is called "entering them short;" and although the banker may endorse them away for a valuable consideration, yet, if he fails with them in his hands, the assignees must give them up, or the amount, if received, deducting of course any set off. And bills in the hands of a factor are subject to the same rule. Giles *v.* Perkins (1807), 9 East, 12. Zinck *v.* Walker (1777), 2 Black. 1154. Carstairs *v.* Bates (1813), 3 Campbell, 301. Tompson *v.* Giles (1824), 2 B. & C. 422. And it does not make any difference if the bills were deposited as a security for future advances. Truetel *v.* Barandon (1817), 1 Moore, 543. 8 Taunton, 100.

But if a bill is taken in exchange for another, although the second bill is not paid, yet the original bill cannot be recovered, Hornblower *v.* Proud (1819), 2 B. & Ald. 327.

A bankrupt drawer of a bill cannot be arrested by the acceptor for a bill becoming due and paid by the acceptor *after* he is made a bankrupt, because of the protection allowed by the 5 G. 2. c. 30. to all bankrupts attending the commissioners. 4 T. R. 209.

CHAP. V.

ACTIONS ON BILLS OF EXCHANGE.

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PARTIES TO AN ACTION.

BARON AND FEME.

In an action on a bill of exchange payable to a feme sole who afterwards marries, the action may be brought either in the name of the husband, or in that of the husband and wife, whether the wife has indorsed the bill or not. M'Neilage *v.* Holloway (1818), 1 B. & Ald. 218. But if they join in an action in assumpsit, the interest of the wife must be stated. Bidgood *v.* Way (1779), 2 W. Black. 1236. If the bill is indorsed to the wife after marriage, the husband must of course sue alone.

ASSIGNEES AND EXECUTORS.

Assignees may sue in their own names for bills of exchange belonging to the bankrupt. 6 G. 4. c. 16. s. 68. But if they have to continue an action already commenced by the bankrupt, they must do so in his name, and then make themselves by scire facias parties. 2 Archbold, P. C. B. 139.

If an executor is also the acceptor of a bill of exchange belonging to the testator, the bill is not recoverable if he has administered; but it is otherwise if there is another executor, and the acceptor has not administered. Rawlinson *v.* Shaw (1790), 3 T. R. *557.*

And if the holder merely as trustee of a bill of exchange becomes a bankrupt, and his assignees recover the amount, they are liable to the owner. Randall *v.* Bell (1813), 1 M. & S. 714.

INFANT.

If an infant sues on a bill of exchange, he may do it either in his own name, or by guardian or prochein amy; and he may, in case of nonsuit, be arrested for the costs. Dow *v.* Clarke (1833), 1 C. & Mees, 860. Finley *v.* Jowle (1810), 13 East, 6. Warwick *v.* Bruce (1813), 2 M. & S. 205. His guardian or prochein amy is of course liable. Evans *v.* Davis (1831), 1 C & J. 460.

If a partner in a company is an infant, he need not be sued, but it must be declared that the other partner accepted, drew, or indorsed, in the name of the infant; and it will not avail a plea in abatement that the infant ought also to be joined; the replication of infancy is sufficient. Burgess *v.* Merril (1812), 4 Taunton, 468. Lord Mansfield: "If an infant forms a partnership with an adult, he holds himself forth to the world as not being an infant; he practises a fraud upon the world, and it does not lay in his mouth, as the phrase is, of an adult who combines with him in practising this fraud, to avoid his own contract by saying his partner is an infant and incompetent to make a contract."

An infant cannot be sued even for necessaries, either as acceptor, drawer, or indorser of a bill of exchange. Trueman *v.* Hirst (1785), 1 T. R. 40. But if after he comes of age, and before the action is commenced, he expressly admits in writing his liability, and promises to pay, then he is rendered liable. Thornton *v.* Illingworth (1824), 2 B. & C. 824. 9 Geo. 4. c. 14. s. 5. But nothing short of this express promise will suffice, not even an acknowledgment of his liability; and a promise to pay a part, or payment of a part, renders him liable for the remainder. Dilk *v.* Keighley (1796), 2 Espinasse, 480. Thupp *v.* Fielder, ibid. 628.

And if an infant partner does not, on coming of age, give notice to all those who are dealing with the firm that he is not a partner, he will certainly be liable. Goode *v.* Harrison (1821,) 5 B. & Ald. 147.

JOINT PARTIES.

If a bill is due to parties in partnership, the action must be brought in the names of them both; but if it is due to them as joint holders, then it may be recovered by separate actions. Osborne *v.* Amphlet (1804), 5 East, 225.

If a partner accepts a bill in the name of the firm, it is no defence to show that one of the partners had retired previous to the accepting. Liddiard Exparte (1834), 2 Mont & Ayr, 87. Or that his partner had previously committed a secret act of bankruptcy. Robinson Exparte (1833), 1 Mont & Ayr, 18.

An action by a payee may be brought against the drawer, either in debt or in assumpsit; but by the payee or indorsee against the acceptor, or by the indorsee against the drawer or indorser, it can only be in assumpsit. See Archbold on Pleading, 17.

ACTIONS IN ASSUMPSIT.

An action on a bill of exchange in assumpsit must be commenced within six years from the time of the cause of action, which time begins from the time the bill becomes due. Wittersham *v.* Carlisle (1791), 1 H. Black. 631. Chievely *v.* Bond (1692), 4 Modern, 105. 1 Shower, 341. And if the note is payable at sight or after demand, not till it has been presented for payment. Holmes *v.* Kerrison (1810), 2 Taunton, 323.

The bill may, however, be revived by a subsequent unconditional promise. Tanner *v.* Smart (1827), 6 B. & C. 608, 609. A'Court *v.* Cross (1825), 3 Bingham, 329. But of course this promise must be in writing. 9 Geo. 4. c. 14. s. 1.

If the cause of action is joint, then the action must be brought against all the parties who, either expressly or by implication, made the contract; and if one party is dead, then the circumstance must be suggested in the declaration against the survivor. Tissard *v.* Warcup (1677), 2 Modern, 279. But if there are two acceptors, there is no necessity to sue both. York *v.* Blott (1816), 5 M. & S. 71.

DECLARATION.

The date of the writ need not, notwithstanding the pleading rules of Hil. T. 4 W. 4., be stated in the declaration. Da Pue *v.* Langridge (1833), 2 Dowl. P. C. 584.

Under the rule Hil. T. 4. W. 4., the court will allow costs on two or more counts in a declaration if they show different causes of complaint. Lawrence *v.* Stevens (1835), 1 Gale, 164. And the common counts are separate and distinct counts for the purposes of pleading. Jourdaine *v.* Johnson (1835), 5 Tyrwhitt, 524. 4 Dowl. P. C. 534.

"And the rule is not that the issue must be joined on a single fact, but on a single point of defence." Lord Abinger in Isaac *v.* Farrar (1836), 1 Tyr. & G. 288.

VENUE.

By the general rules of the courts, Hil. T. 4 Will. 4. s. 8., the venue need not be stated in the body of the declaration or subsequent pleading, and the county in the margin shall be taken to be the venue intended by the plaintiff. The venue in an action of assumpsit may be laid in any county, for debitum et contractus sunt nullius loci, even if the debt was contracted abroad. The Dutch Co. *v.* Moses (1725), 1 Strange, 612. Roberts *v.* Harnage (1704), Salkeld, 659. Co. Lit. 282.

If there is no venue laid, the defendant may demur, or may plead it in abatement. 1 Comyn's Dig. 1 Lutwyche, 285.

After an order for time on the usual terms, and an undertaking to try, it is too late to change the venue. Haythorn *v.* Bush

(1833), 2 Dowl. P. C. 240. And in an action on a promissory note, and for goods sold and delivered, the defendant cannot change the venue, without disclosing his ground of defence; and his application must not be made until after he has pleaded. Parmenter *v.* Otway (1834), 3 Dowling, P. C. 66. And when only part of a cause of action arises on a bill of exchange, the venue can only be changed on a special affidavit disclosing special circumstances. Walthew *v.* Syer (1834), 3 Dowl. P. C. 160. 5 Tyrwhitt, 217. 1 C. M. & R. 596.

RULES OF ALL THE COURTS.

Hilary Term, 4 *William* 4. 1834.

5. AND WHEREAS by the mode of pleading hereinafter prescribed, the several disputed facts material to the merits of the case will, before the trial, be brought to the notice of the respective parties, more distinctly than heretofore; and by the said act of 3 & 4 W. 4. c. 42. s. 23. the powers of amendment at the trial in cases of variance in particulars not material to the merits of the case are greatly enlarged:

Several counts shall not be allowed unless a distinct subject matter of complaint is intended to be established in respect of each; nor shall several pleas, or avowries, or cognisances, be allowed, unless a distinct ground of answer or defence is intended to be established in respect of each.

Therefore counts founded on one and the same principal matter of complaint, but varied in statement, description, or circumstance only, are not to be allowed.

Ex. gr. — So counts for not giving, or delivering, or accepting a bill of exchange in payment, according to the contract of sale, for goods sold and delivered, and for the price of the same goods to be paid in money, are not to be allowed.

But counts upon a bill of exchange or promissory note, and for the consideration of the bill or note in goods, money, or otherwise, are to be considered as founded on distinct subject matters of complaint, for the debt and the security are different contracts; and such counts are to be allowed.

No venue in body of pleading.

8. The name of a county shall in all cases be stated in the margin of a declaration, and shall be taken to be the venue intended by the plaintiff; and no venue shall be stated in the body of the declaration, or in any subsequent pleading.*

RULES OF ALL THE COURTS.

Hilary Term, 4 *William* 4. 1834.

R. I.

2. In all actions upon bills of exchange and promissory notes, the plea of *non-assumpit* shall be inadmissible. In such actions, therefore, a plea in denial must traverse some matter of fact; *ex. gr.*

* These rules are part and parcel of the law of England. Roffey *v.* Smith (1834), 6 C. & P. 662.

the drawing or making, or indorsing or accepting, or presenting or notice of dishonour of the bill or note.

3. In every species of assumpit, all matters in confession and avoidance, including not only those by way of discharge, but those which show the transaction to be either void or voidable in point of law, on the ground of fraud or otherwise, shall be specially pleaded; *ex. gr.* infancy, coverture, release, payment, performance, illegality of consideration either by statute or common law, drawing, indorsing, accepting, &c. bills or notes by way of accommodation, set off, mutual credit, &c. and various other defences, must be pleaded.

R. II.

4. The defendant shall deny specifically some particular matter or fact alleged in the declaration, or plead specifically in confession or avoidance.

GENERAL RULES.

M. T. 3 *W.* 4. 1832, *sect.* 15. *Form of Pleadings.*

IT IS FURTHER ORDERED, that every declaration shall in future be entitled in the proper court, and of the day of the month and year on which it is filed or delivered, and shall commence as follows:

Titles and Commencements of Declarations in Actions on Bills of Exchange.

"In the King's Bench, &c. (or Exchequer of Pleas or Common Pleas), the day of 183 — Commencement of the declaration after summons.

"A. B. by E. F. his attorney (or in his own proper person) complains of C. D. who has been summoned to answer the said A. B. in an action upon promises (as the fact may be)." — Form No. 1. Venue.

As in form 1. to "who has been arrested at the suit of the said A. B. in an action upon," &c. — The like after arrest, but where the defendant is not in custody.

As in form 1., to "being detained at the suit of the said A. B. in the custody of the sheriff of (or as the case may be, marshal, &c.), in an action upon," &c. — When the defendant is in custody.

As in form 1., to "who has been arrested (or being detained), at the suit of A. B. and of H. I., who has been served with a writ of capias to answer," &c. — After one defendant has been arrested and another has been served only.

Trinity Term, 1 *Will.* 4. 1831. *

WHEREAS declarations in actions upon bills of exchange, promissory notes, and the counts usually called the common counts, occasion unnecessary expense to parties by reason of

* These general rules of court are made pursuant to the 1 W. 4, c. 70. s. 11.

Declarations to be according to prescribed forms.

their length, and the same may be drawn in a more concise form: Now for the prevention of such expense, it is ordered, that if any declaration in assumpsit hereafter filed or delivered, and to which the plaintiff shall not be entitled to a plea as of this term, being for any of the demands mentioned in the schedule of forms and directions annexed to this order, or demands of a like nature, shall exceed in length such of the said forms set forth or directed in the said schedule, as may be applicable to the case, or if any declaration in debt to be so filed or delivered for similar causes of actions, and for which the action of assumpsit would lie, shall exceed such length, no costs of the excess shall be allowed to the plaintiff if he succeeds in the cause; and such costs of the excess as have been incurred by the defendant, shall be taxed and allowed to the defendant, and be deducted from the costs allowed to the plaintiff. And it is further ordered, that on the taxation of costs as between attorney and client, no costs shall be allowed to the attorney in respect of any such excess of length; and in case any costs shall be payable by the plaintiff to the defendant on account of such excess, the amount thereof shall be deducted from the amount of the attorney's bill.

If not, no costs of excess allowed.

Tenterden,	J. Vaughan,
N. C. Tindal,	J. Parke,
Lyndhurst,	W. Bolland,
J. Bayley,	J. B. Bosanquet,
J. A. Park,	W. E. Taunton,
J. Littledale,	E. H. Alderson,
S. Gaselee,	J. Patteson.

SCHEDULES OF FORMS AND DIRECTIONS.

Count on a promissory note against the maker by payee or indorsee, as the case may be.

1.* For that whereas the defendant on the day of in the year of our Lord at London [*or* in the county of] made his promissory note in writing, and delivered the same to the plaintiff, and thereby promised to pay to the plaintiff £ { days / weeks / months } after the date thereof [*or as the fact may be*], which period has now elapsed [*or if the note be payable to* A. B.], and then and there delivered the same to A. B. and thereby promised to pay to the said A. B. or order £ { days / weeks / months } after the date thereof [*or as the fact may be*], which period has now elapsed, and the said A. B. then and there indorsed the same to the plaintiff, whereof the defendant then and there had notice, and then and there in consideration of the premises promised to pay the amount of the said note to the plaintiff according to the tenor and effect thereof.

* The venue being now omitted in the body of the declaration, it is no longer necessary to insert the words "and there." See the 8th Rule on Pleadings: see also Charnock's very excellent Digest of all the New Rules of Practice and Pleading, p. 15.

Count on a promissory note against payee by an indorsee.

2. WHEREAS one C. D. on the day of in the year of our Lord at London [*or* in the county of] made his promissory note in writing, and thereby promised to pay the defendant or order £ { days / weeks / months } after the date thereof [*or as the fact may be*], which period has now elapsed, and the defendant then and there indorsed the same to the plaintiff [*or* and the defendant then and there indorsed the same to X. Y., and the said X. Y. then and there indorsed the same to the plaintiff], and the said C. D. did not pay the amount thereof, although the same was there presented to him on the day when it became due, of all which the defendant then and there had due notice.

Count on a promissory note against indorser by indorsee.

3. WHEREAS one C. D. on at London [*or* in the county of] made his promissory note in writing, and thereby promised to pay to X. Y. or order £ { days / weeks / months } after the date thereof [*or as the fact may be*] which period has now elapsed and then and there delivered the said note to the said X. Y., and the said X. Y. then and there indorsed the same to the defendant and the defendant then and there indorsed the same to the plaintiff [*or* and the defendant then and there indorsed the same to Q. R., and the said Q. R. then and there indorsed the same to the plaintiff], and the said C. D. did not pay the amount thereof, although the same was there presented to him on the day when it became due, of all which the defendant then and there had due notice.

Count on an inland bill of exchange against the acceptor by the drawer, being also payee.

4. WHEREAS the plaintiff on at London [*or* in the county of] made his bill of exchange in writing and directed the same to the defendant, and thereby required the defendant to pay to the plaintiff £ { days / weeks / months } after the { date / sight } thereof, which period has now elapsed, and the defendant then and there accepted the said bill and promised the plaintiff to pay the same, according to the tenor and effect thereof and of his said acceptance thereof, but did not pay the same when due.

Count on an inland bill of exchange against the acceptor by the drawer, not being the payee.

5. WHEREAS the plaintiff on at London [*or* in the county of] made his bill of exchange in writing, and directed the same to the defendant and thereby required the defendant to pay to O. P. or order £ { days / weeks / months } after the { date / sight } thereof which period has now elapsed and then and there delivered the same to the said O. P. and the said defendant then and there accepted the same and promised the plaintiff to pay the same, according to the tenor and effect thereof and of his acceptance thereof, yet he did not pay the amount thereof, although the said bill was there presented to him on the day when it became due, and there-

upon the same was then and there returned to the plaintiff, of all which the defendant then and there had notice.

Count on an inland bill of exchange against the acceptor by indorsee.

6. WHEREAS one E. F. on at London [*or* in the county of] made his bill of exchange in writing, and directed the same to the defendant, and thereby required the defendant to pay to the said E. F. [*or to* H. G.] or order £ { days / weeks / months } after { sight / date } thereof, which period is now elapsed, and the defendant then and there accepted the said bill, and the said E. F. [*or the said* H. G.] then and there indorsed the same to the plaintiff [*or* and the said E. F. or the said H. G. then and there indorsed the same to K. J., and the said K. J. then and there indorsed the same to the plaintiff], of all which the defendant then and there had due notice, and then and there promised the plaintiff to pay the amount thereof, according to the tenor and effect thereof and of his acceptance thereof.

Count on an inland bill of exchange against the acceptor by the payee.

7. WHEREAS one E. F. on at London [*or* in the county of] made his bill of exchange in writing and directed the same to the defendant, and thereby required the defendant to pay to the plaintiff £ { days / weeks / months } after the { sight / date } thereof, which period has now elapsed, and the defendant then and there accepted the same and promised the plaintiff to pay the same, according to the tenor and effect thereof and of his acceptance thereof.

Count on an inland bill of exchange against the drawer by payee on non-acceptance.

8. WHEREAS the defendant on at London [*or* in the county of] made his bill of exchange in writing and directed the same to J. K., and thereby required the said J. K. to pay to the plaintiff £ { days / weeks / months } after the { sight / date } thereof, and then and there delivered the same to the said plaintiff, and the same was then and there presented to the said J. K. for acceptance, and the said J. K. then and there refused to accept the same, of all which the defendant then and there had due notice.

Count on an inland bill of exchange against drawer by indorsee on non-acceptance.

9. WHEREAS the defendant on at London [*or* in the county of made his bill of exchange in writing and directed the same to J. K., and thereby required the said J. K. to pay to the order of the said defendant £ { days / weeks / months } after the { sight / date } thereof, and the said defendant then and there indorsed the same to the plaintiff [*or* and the said defendant then and there indorsed the same to L. M., and the said L. M. then and there indorsed the same to the plaintiff], and the same was then and there presented to the said J. K. for acceptance, and the said J. K. then and there refused to accept the same, of all which the defendant then and there had due notice.

Count on an inland bill of exchange against indorser by indorsee on non-acceptance.

10. AND WHEREAS one N. O. on at London [*or* in the county of] made his bill of exchange in writing and directed the same to P. Q., and thereby required the said P. Q. to pay to his order £ { days / weeks / months } after the { date / sight } thereof, and the said N. O. then and there indorsed the said bill to the defendant [*or* to R. S., and the said R. S. then and there indorsed the same to the defendant], and the defendant then and there indorsed the same to the plaintiff, and the same was then and there presented to the said P. Q. for acceptance, and the said P. Q. then and there refused to accept the same, of all which the defendant then and there had due notice.

Count on an inland bill of exchange against payee by indorsee on non-acceptance.

11. WHEREAS one N. O. on at London [*or* in the county of] made his bill of exchange in writing and directed the same to P. Q., and thereby required the said P. Q. to pay to the defendant or order £ { days / weeks / months } after the { sight / date } thereof, and then and there delivered the same to the defendant, and the defendant then and there indorsed the said bill to the plaintiff [*or* to R. S. and the said R. S. then and there indorsed the same to the plaintiff], and the same was then and there presented to the said P. Q. for acceptance, and the said P. Q. then and there refused to accept the same, of all which the defendant then and there had due notice.

Direction for declarations on bills where action brought after time of payment expired.

1st — On bills payable after date.

If the declaration be against any party to the bill except the drawee or acceptor, and the bill be payable at any time after date and the action not brought till the time is expired, it will be necessary to insert, as in declarations on promissory notes, immediately after the words denoting the time appointed for payment, the following words, viz. *which period has now elapsed;* and instead of averring that the bill was presented to the drawee for *acceptance* and that he refused to *accept* the same, to allege that the drawee [naming him] did not pay the said bill, although the same was there presented to him on the day when it became due.

2d — On bills payable after sight.

And if the declaration be against any party except the drawee or acceptor, and the bill be payable at any time after sight, it will be necessary to insert, after the words denoting the time appointed for payment, the following words, viz. *and the said drawee* [naming him] *then and there saw and accepted the same, and the said period has now elapsed;* and instead of alleging that the bill was presented for acceptance and refused, to allege that the drawee [naming him] *did not pay the said bill, although the same was presented to him on the day when it became due.*

Directions for declarations on bills or notes payable at sight.

If a *note or bill* be payable *at sight*, the form of the declaration must be varied so as to suit the case, which may be easily done.

On foreign bills.

. Declarations on foreign bills may be drawn according to the principle of these forms, with the necessary variations.

COMMON COUNTS.

Goods bargained or delivered.

WHEREAS the defendant on at London [*or* in the county of] was indebted to the plaintiff in £ for the price and value of goods then and there {bargained / sold} and {sold / delivered} by the plaintiff to the defendant at his request:

Work and materials.

And in £ for the price and value of work then and there done and materials for the same, provided by the plaintiff for the defendant at his request:

Money lent.

And in £ for money then and there lent by the plaintiff to the defendant at his request:

Money paid.

And in £ for money then and there paid by the plaintiff for the use of the defendant at his request:

Money received.

And in £ for money then and there received by the defendant for the use of the plaintiff:

Account stated.

And in £ for money found to be due from the defendant to the plaintiff on an account then and there stated between.

General conclusion.

AND WHEREAS the defendant afterwards on, &c. in consideration of the premises respectively, then and there promised to pay the said several monies respectively to the plaintiff on request, YET he hath disregarded his promises and hath not paid any of the said monies or any part thereof, to the plaintiff's damage of £ and thereupon he brings suit, &c.

Directions as to the general conclusion.

If the declaration contains one or more counts against the maker of a note or acceptor of a bill of exchange, it will be proper to place them first in the declaration, and then in the general conclusion to say, "promised to pay the said *last-mentioned several monies respectively.*" *

The titles and commencements (see p. 63.) are to be added to these Schedules of Forms of Directions given by the General Rules of Court of T. T., 1 W. 4. 1831.

* These forms, since the Uniformity of Process Act, 2 W. 4. c. 39., require some alteration, or else they will be held bad on special demurrer. It must be stated after the words *after the date thereof*, "which period had elapsed before the commencement of this suit." Aslet *v.* Abbot (1836), 1 T. & G. 448.

I will give one form at length: —

Form of Declaration against the Acceptor by the Indorsee on an Inland Bill of Exchange.

"In the K. B. the day of 183

"A. B. by C. D. his attorney [*or* in person] complains of E. F. who has been summoned [arrested, detained, as the case may be, see *Titles and Commencements*, p. 63.] in an action on promises Whereas one G. H. on the day of 183 , made his bill of exchange in writing, and directed the same to the defendant, and thereby required the defendant to pay to the said G. H. [*or* M. N.] or order pounds days [months or weeks] after sight [*or* date] thereof, which period had elapsed before the commencement of this suit, and the defendant accepted the said bill, and the said G. H. [*or* the said M. N.] indorsed the same to the plaintiff, and the said [*or* and the said G. H. or the said M. N. indorsed the same to P. Q., and the said P. Q. indorsed the same to the plaintiff], of all which the plaintiff had due notice, and promised the plaintiff to pay to him the amount thereof, according to the tenor and effect thereof and of his acceptance thereof."

(If there are any common counts here, introduce them from the Schedule of Forms and Directions.)

"Whereas the defendant, on at was indebted to the plaintiff in £ for work [money, &c. as the case may be]."

Then add the general conclusion: —

"And whereas the defendant afterwards, on, &c. in consideration of the premises respectively, then and there promised to pay the said several monies respectively to the plaintiff on request, yet he hath disregarded his promises, and hath not paid any of the said monies or any part thereof, to the plaintiff's damage of £ and therefore he brings suit," &c.

The plaintiff in an action against the drawer must certainly allege in his declaration a promise to pay, otherwise it is a valid objection on a special demurrer. Henry *v.* Burbidge (1837), 3 Bingham's N. C. 501.

Considerable trouble, delay, and expense, having formerly been experienced by the ignorance of the holders of bills of exchange of the correct Christian names of the parties to dishonoured bills, it is provided by the 3 & 4 of W. 4. c. 42. s. 12., "That in all actions upon bills of exchange or promissory notes, or other written instruments, any of the parties to which are designated by the initial letter or letters, or some contraction of the Christian or first name or names, it shall be sufficient on every affidavit to hold to bail, and in the process or declaration to designate such persons by the same initial letter or letters or contraction of the Christian

or first name or names, instead of stating the Christian or first name or names in full.

If the defendant by his plea deny the acceptance, he may still give evidence of the partial payment of the bill, so as to reduce the damages. Shirly *v.* Jacobs (1835), 4 Dowling, 136. 2 Bingham, N. C. 88. Easton *v.* Pratchett (1835), 1 C. M. & R. 798. 3 Dowling, 472. 4 Tyrwhitt, 472. Lord Abinger: "The plea of the general issue is forbidden by the new rules to be pleaded in an action on a bill of exchange; and the plea of the special matter which, according to the New Rules, is now to be pleaded, is not to be confined to the effecting the same purpose, as a mere notice to prove the consideration. It was intended that the plaintiff should be apprised by the plea of the grounds upon which the defendant objects to the right of recovering upon the bill; as, for example, that it was given for the accommodation of the plaintiff, the onus of proving which lies on the defendant; or that it was given upon a consideration which afterwards failed, which, in like manner, the defendant must prove; or that it was given on a gambling transaction; and various similar cases may be readily suggested."

If the acceptor pleads want of consideration and fraud, the plaintiff need not state the consideration at length in his replication. Bramah *v.* Baker (1835), 3 Dowling, 392. Prescot *v.* Levi (1835), 3 Dowling, 403. And wherever the plea is merely a general one of want of consideration, the onus of proof lies, in the first instance, upon the defendant. Battley *v.* Catteral (1834), 1 M. & Robinson, 379. Lacey *v.* Forrester (1835), 2 C. M. & R. 59. Low *v.* Burrows (1835), 4 Nev. & Man. 366.

Illegal considerations must be specially pleaded. Potts *v.* Sparrow (1835), 1 Bingham, N. C. 594.

If the acceptor plead that he did not accept the bill, he may still give in evidence that a material alteration has been made since he accepted it, so as to vitiate the bill. Cock *v.* Coxwell (1835), 4 Dowling, 187.

But he must not plead, in an action by an indorsee, that he accepted it without consideration from the drawer. Low *v.* Chifney (1834), 1 Bingham, N. C. 267. French *v.* Archer (1834), 3 Dowling, 130.

If the defendant plead coverture, it is a sufficient replication that she accepted the bill as the agent of her husband. Prince *v.* Brunatte (1835), 1 Scott, 342.

No bill of particulars is demandable where a declaration on a bill of exchange contains only a single count. Brooks *v.* Farlar (1836), 6 Law J. R. Common Pleas, 26. C. J. Tindal: "Unless it is shewn clearly and satisfactorily that the party cannot go on without it."

If the defendant plead matter of excuse, the plaintiff may in reply plead de injuria. Isaac *v.* Farrar (1836), 1 T. & G. 281. And the following form of the replication may be used: Archbold on Pleading, xvi. —

" In the King's Bench, the day of

N— v. S— } " And the said plaintiff, as to the plea of the said defendant by him (secondly) above pleaded, says, that the said defendant, of his own wrong and without the cause by him in that plea alleged, broke his said promise in the said (first count of the said) declaration mentioned, in manner and form as he the said plaintiff has in the said (first count of the said) declaration in that behalf complained against him; and this he the said plaintiff prays may be inquired of by the country," &c.

When a bill became due on a Sunday, it was held sufficient to state in the declaration that " when the said bill became due and payable according to the tenor and effect thereof, to wit, on the 31st of March (this was Sunday, in the case of Bynner *v.* Russel), in the year 1822, was, &c. in due manner presented and shown for payment." Bynner *v.* Russel (1822), 1 Bingham, 23.

" The court held that even on a special demurrer the day was immaterial, being specified under a *to wit*, and in an averment that the bill was presented when it became due and payable."

PLEAS IN BAR.

(See the Gen. Reg. Courts, Hil. 4 W. 4. 1. s. 5.)

A defendant in an action of assumpsit cannot plead a tender as to part, and non-assumpsit as to the whole. Maclean *v.* Howard (1791), 4 T. R. 194. Jenkins *v.* Edwards (1793), 5 T. R. 97. Baker v. Westbroke (1733), 2 Strange, 949. Dowgall *v.* Bowman (1770), 3 Wilson, 145. He may, however, plead non-assumpsit and the Statute of Limitations. Harrison *v.* Winchcombe (1726), 1 Strange, 678. Or non-assumpsit, the Statute of Limitations, and a set-off; non-assumpsit and a set-off; non-assumpsit and judgment recovered. But see Bones *v.* Punter (1819), 2 B. & Ald. 777. Non-assumpsit and a discharge under an Insolvent Act. See Archbold on Pleading, 236.

A plea must still conclude with a verification or to the country, notwithstanding the rules of Hil. T. 4 W. 4. Knowles *v.* Stevens (1834), 1 C. M. & R. 26. 2 Dowling's P. C. 664.

If a defendant plead that the bill was paid when due, and secondly that he did not promise, and as to the common counts that he put himself upon the country, the plaintiff may treat each as a separate plea and sign judgment, there being no signature to the pleas or rule to plead double. Hockley *v.* Sutton (1834), 2 Dowling, P. C. 700. But in an action on a bill of exchange and on an account stated, he may plead, without a rule to plead several matters, that he did not accept the bill; and for a further plea, that he did not account. Vere *v.* Goldsborough (1834), 1 Bingham, N. R. 353. 1 Scott, 265.

CHAP. VI.

EVIDENCE IN AN ACTION ON A BILL OF EXCHANGE.

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EVIDENCE IN AN ACTION ON A BILL.

THE first thing necessary to be done is to produce the bill itself, and show that it is the same bill described in the declaration. It will not do to produce a part of it and prove the loss of the remainder. Major *v.* Johnson (1813), 3 Camp. 325. Without it can be shown that the other moiety is destroyed, or that it was not payable to order or to bearer. Mossop *v.* Headon (1810), 16 Vesey, 436. Or unless proof can be given that it is entirely destroyed; in which case a copy must be produced. 1 Lord Ray. 731. And the proof of its being destroyed must be clear: proof that it is only lost will not do; nor will the proof of an offer of an indemnity serve instead. Pearson *v.* Hutchinson (1809), 2 Campbell, 211. 6 Espinasse, 126. Or that it was lost when over due. Hansard *v.* Robinson (1827), 7 B. & C. 90. Or that the payee promised to pay it. Davis *v.* Todd (1812), 4 Taunton, 602. "There is," said the Court, "no moral obligation on the defendant to pay this sum to the plaintiff, who, by his negligence, has exposed the defendant to the danger of being compelled to pay the bill when produced in the hands of another holder." But if the lost bill is specially indorsed by the payee, then the plaintiff may recover, because the bill is worthless in the hands of the holder. Smith *v.* Clarke (1794), Peake, 226. Long *v.* Baillie (1805), 2 Campbell, 213. And see Glover *v.* Tompson, 1 R. & M. 403.; and Brown *v.* Messiter (1814),

3 M. & S. 281. Or if the acceptor refuses to give up a bill, notice may be given to him to produce, and in default parol evidence given and the amount recovered. Smith *v.* Maclure (1804), *5* East, 476. Frederick *v.* Cotton (1678), 2 Shower, 8. Fisher *v.* Pomfret, 12 Modern, 125. Or if he admit that the money is due on the bill, which is in his own possession, then evidence may be given without notice to produce. Fryar *v.* Brown, R. & M. 145.

If an alteration appears on the bill, the proof of its being properly made lies with the plaintiff. Henman *v.* Dickinson (1828), *5* Bingham, 183. Bishop *v.* Chambre (1827), 3 C. & P. *55*. S. C. 1 M. & M. 116.

Care should be had to make the declaration correspond with the bill as to the names of the parties, although slight variations will be remedied by the 3 & 4 W. 4. c. 42. Jowett *v.* Charmock (1817), 6 M. & S. 45. Willis *v.* Barrett (1816), 2 Starkey, 29. Atwood *v.* Griffin (1826), R. & M. 425. Forman *v.* Jacob (1815), 1 Starkey, 46. Dickenson *v.* Bowes (1812), 16 East, 110. (wrong Christian name, but process served on right person). But these blunders will be fatal if at all material. Gordon *v.* Austin (1792), 4 T. R. 611. Shovel *v.* Evance (1697), 1 Lutwyche, 36. Whitwell *v.* Bennett (1803), 3 B. & P. *559*.

If the bill is made payable in the body of the bill at a certain place, that must be stated. Sanderson *v.* Bowes (1811), 14 East, 500. Lord Ellenborough: "If the request at the place be a condition precedent, it should have been averred; and for want of such averment the declaration is bad." See also Roche *v.* Campbell (1812), 3 Campbell, 247. Hodge *v.* Ellis (1813), 3 Campbell, 463. Callaghan *v.* Aylett (1811), 3 Taunton, 397.

But if the place of payment is only indicated in a memorandum at the foot of the bill, it is no variance to omit it. Hardy *v.* Woodroofe (1818), 2 Starkie, 319. Sprorule *v.* Legge (1822), 3 Starkie, 157. Although in Exon *v.* Russell (1816), 4 M. & S. *505*., a contrary doctrine was held. See also Saunderson *v.* Judge (1795), 2 H. Blackstone. Price *v.* Mitchell (1815), 4 Camp. N. P. C. 200. Bowes *v.* Howe (1813), *5* Taunton, 30.

It is not material the variance between the proof of presentation and the averment, if against an acceptor. Forman *v.* Jacob (1815), 1 Starkie, 46. But if the action is against the drawer or indorser, then more accuracy is essential. Bayley on Bills, 317.

The handwriting of the defendant must be proved, or if he accepted for himself and partners, this proves the partnership, and his handwriting. Mason *v.* Rumsey (1808), 1 Campbell, 384. Or if by agent, his authority and handwriting, of which the agent himself is a competent witness. Johnson *v.* Mason (1794), 1 Esp. 89.

If the defendant promised to pay the money, then it is unnecessary to prove either presentation, dishonour, or notice. Lundie *v.* Robertson (1806), 7 East, 231. Taylor *v.* Jones (1809), 2

Campbell, 105. Gibbon *v.* Coggon (1809), 2 Campbel, 188. Greenway *v.* Hindley (1814), 4 Campbell, 52.

If an indorsee brings his action, he must prove the handwriting of the first indorser, and of all those he states in his declaration. If the bill has been stolen or lost, he should be prepared to show that he honestly gave a valuable consideration for it. Peacock *v.* Rhodes (1781), Douglas, 611.

In actions against an indorser, the indorsement must be proved, that the bill was duly presented, and that the defendant had regular notice of that fact. If this proof is by showing that a letter was put into the post office directed to him, then the defendant must have notice to produce that letter, otherwise evidence to that effect cannot be given: the indorsement of the defendant proves the indorsement of the drawer, and all the previous indorsers. Saunderson *v.* Judge (1795), 2 H. Black. 509.

As there are certain things essentially necessary to be included in a written notice of non-acceptance or non-payment, I will here give a form of notice of dishonour, which will be sufficient in all ordinary cases.

"Lombard street, of 18 .

"I hereby give you notice, that the bill dated the 18 for pounds shillings pence, {drawn / indorsed} by you, was presented to the drawee [*or* acceptor] Mr. [*or* mention place of payment] for acceptance [*or* payment], on the of this month, when it was dishonoured, and still remains unaccepted [*or* unpaid], the answer by being *no effects* [no orders, or as the case may be]."

Solarte *v.* Palmer (1834), 1 Bingham, N. R. 194. 2 C. & Fin. 95. Beauchamp *v.* Cash (1821), 1 D. & R. N. P. C. 3. Hartley *v.* Case (1825), 4 B. & C. 339. "There is no precise form of words necessary," said Lord Tenterden in this case, "to be used in giving notice of the dishonour of a bill of exchange, but the language used must be such as to convey notice to the party what the bill is, and that payment of it has been refused by the acceptor."

If the defendant, however, acknowledges his handwriting, promises to pay, or pays part, the handwriting need not then be proved. Jones *v.* Morgan (1810), 2 Campbell, 474. Vaughan *v.* Fuller (1746), 2 Strange, 1246. Or pays part into court. Bishop *v.* Chambre (1827), 3 C. & P. 55. 1 M. & M. 116. But if there is more than one acceptor not in partnership, these admissions do not bind the rest. Gray *v.* Palmer (1794), 1 Esp. 135.

If an acceptor acknowledges his handwriting, he cannot afterwards plead that it is a forgery. Leach *v.* Buchanan (1803), 4 Espinasse, 226. It is necessary to identify the defendant as the acceptor. Parkins *v.* Hawksbee (1817), 2 Starkie, 239.

If the payee and the drawer are one person, the bill itself will be deemed evidence, under the count of money had and received. Tompson *v.* Morgan (1811), 3 Camp. 101.

It is only necessary to prove the first indorsement if it is in blank, and it is stated that the indorsement was from the payee to the in-

dorsee. Smith *v.* Clarke (1794), Peake, 225. But if the plaintiff has stated in his count all the indorsements, he must prove them if they are denied. Bosanquet *v.* Anderson (1796), 6 Esp. 43. Waynam *v.* Bend (1808), 1 Campbell, 175.

In the count for money had and received, it is only between immediate parties that the bill is evidence. Roscoe's Dig. 201. Waynam *v.* Bend (1808), 1 Campbell, 175. Exon *v.* Russell (1816), 4 M. & S. 507. Bentley *v.* Northouse, M. & M. 66. Eales *v.* Dicker, idem, 324.

An indorser by his signature admits the validity of all the prior indorsers, and an indorser has nothing to do with the affairs of the drawer and drawee; he is entitled to notice, which must of course be proved, whether it is an accommodaton bill or not. Brown *v.* Maffey (1812), 15 East, 216.

If want of consideration is pleaded, and a replication that a good and valid consideration has been given, "unless the bill be connected with some fraud, and a suspicion of fraud be raised from its being shown that something has been done with it of an illegal nature, as that it has been clandestinely taken away, or has been lost or stolen, in which case the holder must show that he gave value for it, the onus probandi is cast upon the defendant." Lord Abinger (1836), Mills *v.* Barber, 1 M. & W. 432. Jordaine *v.* Lashbrook (1798), 7 T. R. 601.

In foreign bills the nonpayment by the acceptor can only be proved by the protest, which protest, if made abroad, proves itself. Gale *v.* Walsh (1793), 5 T. R. 239.

If the drawer had no effects in the acceptor's hands when the bill was drawn, notice to the drawer is not necessary to be proved; but it is to the indorser, for he has no knowledge of the state of the account between the drawer and acceptor. Bickerdike *v.* Bollman (1786), 1 T. R. 405.

If the drawer bring the action against the acceptor for not paying to the order of a third person, he must prove the presentation, nonpayment, and its return to him, the production of the bill itself with a receipt affixed will not do; that will be considered in favour of the acceptor having paid the bill. Peake's Nisi Prius, 25. Peake's L. E. 236.

It is not necessary to prove, generally speaking, the plaintiff's interest in the bill.

An action may be commenced immediately after a bill is dishonoured, against all the parties to a bill: it is no defence to such an action, to plead that a reasonable time had not elapsed between the notice and the commencement of the action; the only remedy for the defendant is, to apply to the court to stay proceedings on payment of the debt and costs. Siggers *v.* Lewis (1834), 1 C. M. & R. 370. 4 Tyrwhitt, 847. 2 Dowling Prac. Cases, 681. On the plea that no consideration has been had from the drawer, it is necessary to show fraud and knowledge of it, on the part of the indorsee. French *v.* Archer, 3 Dowling's P. C. 180. It is doubtful whether, in accommodation bills, the indorsee need prove a real consideration. Simpson *v.* Clarke (1835), 2 C. M. & R. 343.

If the bill was given in exchange for goods, the defendant cannot, as a defence, plead the worthlessness or bad quality of the goods. Knox *v.* Whalley (1794), 1 Espinasse, 159.

If a person buy goods for three months' credit, payable by a bill at two months, he cannot be sued by an action for goods sold and delivered, though he may on the special contract (per Grose, Le Blanc); and until after the five months have expired, even if he refuses to give the bill when requested. Mussen *v.* Price (1803), 4 East, 147. (per Grose, Le Blanc, and Lawrence, Lord Ellenborough dissentient). But see Nickson *v.* Jepson (1817), 2 Starkey, 227., in which case the agreement was three months' credit, and a bill at *three months if the defendant desired it.*

When a third indorsee sues the acceptor, the defendant cannot oblige the plaintiff to prove consideration, by showing by primâ facie evidence the want of consideration between the indorsers; he must also show want of consideration between the drawer and himself. Whittaker *v.* Edmunds (1834), 1 Adol. & E. 638. If the defendant plead no consideration, the plaintiff need not begin with the proof; it behoves the defendant to prove that fact. Mills *v.* Booker (1835), 2 M. & W. 425. But it is otherwise if the title of the holder is impeached on the ground of fraud, duress, or that the bill has been lost or stolen, *ib.*; neither the drawer of an accommodation bill, or his partner to whom he has indorsed it, can sue the acceptor. Sparrow *v.* Chisman (1829), 4 M. & R. 207. Jacond *v.* French, 12 East, 317. Richmond *v.* Newby (1816), 1 Stark. N. P. C. 204.

WITNESSES IN AN ACTION ON A BILL OF EXCHANGE, &c.

In an action against the acceptor of an accommodation bill the drawer must have a release. Hardwick *v.* Blanshard (1819), Gow, 113. Before he is a competent witness. Jones *v.* Brook (1812), 4 Taunton, 464. Since he does not stand equally indifferent to the acceptor and the indorsee, for the acceptor could recover against him the costs of the action and all other expenses. Larbalastier *v.* Clarke (1831), 1 B. & Adol. 899. Edmonds *v.* Lowe (1828), 8 Barn. & Cress. 407. If, however, he has become a bankrupt, and obtained his certificate, he is then a competent witness. Brind *v.* Bacon (1818), 5 Taunton, 183. Ashton *v.* Louges (1827), M. & M. 127.

In all other cases, the drawer or indorser is a competent witness against the acceptor, even in cases where, by the course of mutual dealings, he happened to be in debt to the drawee when the bill was accepted. Bagnal *v.* Andrews (1830), 7 Bingham, 217.

It has been decided, that any party to the bill not directly interested in the suit may be a witness, even an acceptor. York *v.* Blott (1816), 5 M. & S. 71. Lockhart *v.* Graham (1717), Strange, 35. Jones *v.* Brook (1812), 4 Taunton, 464. Levi *v.* Essex (1775), 2 Espinasse, 708. Jordaine *v.* Lashbrook (1798), 7 T. R. 601. Staples *v.* Okins (1795), 1 Esp. 332. Legge *v.* Thorpe (1810), 2 Campbell, 310. The indirect interest of the witness is only a circumstance to be taken into consideration by the jury, as

regards his credibility, even if he is at the time under a charge of forging the bill. Barber *v.* Gingel (1800), 3 Espinasse, 60. And a mistress or reputed wife may be a witness for or against the person with whom she is living. Hill *v.* Johnson (1828), 3 C. & P. 456. But if the evidence of a wife is to criminate her husband, then she cannot be examined. Henman *v.* Dickinson (1828), 5 Bingham, 183. 2 M. & P. 289. Neither can a wife be examined in any case where the testimony of her husband would be inadmissible. Bettison *v.* Bromley (1810), 12 East, 250.

The admissibility of witnesses indirectly interested in the result of a suit is much enlarged by the 3 & 4 W. 4. c. 42. s. 26. and 27., which provides that a verdict, in a case in which he shall have been examined, shall neither be pleadable for or against such witness, or any one claiming under him; and farther directs that the name of such witness shall, if requested by either party, be indorsed on the record, which shall, in any subsequent proceeding, be sufficient evidence of his having been examined in the case.

A drawer may certainly be examined, even if he has committed a breach of trust in the disposal of the bill. Fancourt *v.* Bull (1835), 1 Bingham, N. R. 681. 1 Scott, 645. And in York *v.* Blott (1816), 5 M. & S. 71., a joint acceptor was examined in an action against the other acceptor.

HARD CASES.

In *hard cases* the injured parties are ever regarded with favour by the courts. Wilkinson *v.* Payne (1791), 4 T. R. 468. This was an action on a promissory note for 180*l.*, given as a marriage portion. The defence was, that it was an illegal marriage, being by licence, without the consent of his guardian (he being a minor), and his parents dead. The jury, to meet the justice of the case, supposed a *subsequent* legal marriage by bans, and found for the plaintiff, on motion for a new trial, which was refused. Lord Kenyon observed: "In the case of new trials it is a general rule, that in a hard action where there is something on which the jury have raised a presumption agreeable to the justice of the case, the court will not interfere by granting a new trial, where the objection does not lie in point of law. This rule is carried so far, that I remember an instance of it bordering on the ridiculous, where in an action on the game laws it was suggested that the gun with which the defendant fired was not charged with shot, but that the bird might have died in consequence of the fright; and the jury having given a verdict for the defendant, the court refused to grant a new trial."

See also Smith *v.* Frampton, Salkeld, 644., for negligence in keeping a fire, by which plaintiff's house was burnt. And idem, 648., Sparks *v.* Spicer, against an officer for hanging a criminal in chains on the private ground of the plaintiff. Idem, 116. Derry *v.* Duchess of Mazarine for wages and money lent; defendant proved that she was married and had a husband living in

France; the jury *supposed a divorce*. The court in all these cases refused to disturb the verdict."

OF WITNESSES TO A FORGERY OF A BILL OF EXCHANGE.

The statutes relating to forgery of bank notes, bills, &c. are consolidated by the 1 W. 4. c. 66.

The name of A. being forged to a receipt, A. was held an incompetent witness to prove the forgery. Rex *v.* Russel, Leach, Cro. Ca. 10.

And where a person, having a bill in his possession, forged a receipt to it in a fictitious name, the acceptor was held incompetent to prove the payment without a release from the indorsee. Rex *v.* Taylor, ibid. 255.

A cashier is a competent witness of the forgery of a note, for he is not personally liable. Rex *v.* Newland, ibid. 350.

In the case of a stolen note, the consignee (*never having received it*) is a competent witness to prove the forgery of his name, or an acquittance. Rex *v.* Ponsonby, ibid. 374.

If a banker pays a forged draft, the banker, *by allowing in account* the amount to his customer, whose name is forged, thereby renders his customer a competent witness. Rex *v.* Usher, ibid. 57.

If the forger pays the money obtained back to the person whose name he has forged, he thereby makes him a competent witness. Will's Case, Buller's N. P. 289.

If the forger assumed a false name in the bill, and his real name is proved, it is for the prisoner to prove that he assumed the fictitious name *prior* to his putting the name in the bill. Rex *v.* Peacock, R. & R. C. C. 278.

By the 43 G. 3. c. 139., forging or altering any foreign bill of exchange, promissory note, or order, is made simple felony and transportation for 14 years.

It is not a forgery but a misdemeanor falsely to represent that a name on the back of a bill is yours. Heney's Case, Leach, 268.

It is a forgery, although the bill has never been stamped. Leach, 292. Lord Kenyon disapproved, however, of the decision. Peake, 168.

But if a bill of exchange is forged in a form which would be void by the statute of 17 G. 3. c. 30., it is not a capital offence. Leach, 483. Moffat's Case. For the bill is neither valid nor negotiable.

By the 9 G. 4. c. 32. s. 11., any person whose name is forged to a bill is now a competent witness in cases of either felony or misdemeanor.

DEFENCE TO AN ACTION ON A BILL OF EXCHANGE.

It is a defence to an action on a bill of exchange, that it is on an improper stamp, or drawn in England, though dated abroad. Bire *v.* Moreau (1826), 2 C. & P. 376. 12 Moore, 226. 4 Bingham, 57. Abraham *v.* Dubois (1815), 4 Campbell, 269. And this need not be specially pleaded. Dawson *v.* Macdonald (1836),

1 Mees & W. 26. That it was drawn for a gambling debt, 9 Ann. c. 14. s. 1.; if the holder is a party, but not otherwise. 5 & 6 W. 4. c. 41. Greenland *v.* Dyer (1828), 2 M. & R. 422. That the defendant is an infant. Truman *v.* Hurst, 1 T. R. 42. Or a feme covert. Marshall *v.* Ratton, 8 T. R. 545. Slater *v.* Mills (1831), 7 Bingham, 606. Jones *v.* Lewis (1816), 7 Taunton, 55. If for longer than three months, usurious consideration. 12 Ann. c. 16. s. 1. Lowe *v.* Waller (1781), Douglas, 712. If the bill is held by parties privy to the usury, but not against a bonâ fide holder for value. 58 G. 3. c. 93. 5 & 6 W. 4. c. 41.

DEFENCE ON THE SCORE OF USURY.

It is a defence if the day stated in the declaration to be that from which the forbearance was to commence, does not correspond with the evidence. Fox *v.* Keeling (1835), 2 Adol. & E. 670. Borrowdaile *v.* Middleton (1810), 2 Campbell, 53. Carlisle *v.* Frears (1777), Cowper, 671. Brooke *v.* Middleton (1808), 10 East, 268. 1 Campbell, 445.

It is also a defence to bills which, when discounted, had more than three months to run, that the plaintiff obliged the defendant to take goods at a greater value than their intrinsic worth. Low *v.* Waller (1781), Douglas, 712. Pratt *v.* Willey (1794), 1 Espinasse, 40. And the onus of the proof that the goods were not overcharged, lies upon the plaintiff. Davis *v.* Hardacre (1810), 2 Campbell, 375. But if the defendant voluntarily offered or cheerfully acceded to the proposition to take goods, or part goods and part cash, then the onus lies on him. Coombs *v.* Mills (1811), 2 Campbell, 553. There is, in fact, no reason why goods should not be taken provided there is no oppression. Evans *v.* Whyle (1829), 5 Bingham, 485. But it is certainly a defence if the defendant was obliged to take of the plaintiff, instead of cash, another bill of exchange or promissory note. Par *v.* Eliason (1804), 1 East, 90. Matthews *v.* Griffiths (1794), 1 Peake, 264. But even then, if for any bonâ fide reason the bill taken in exchange is more valuable than that given, then it is not a defence. Stoveld *v.* Eade (1827), 4 Bingham, 81. And it is certainly not a defence that the defendant was obliged to keep a certain sum of money in the plaintiff's (a banker's) hands, while he discounted the bills. Exparte Patrick (1833), 1 M. & A. 385. Ibid. 393.

It is also a defence between the parties if the bill was given in consideration of a creditor's signing a bankrupt's certificate. 5 G. 2. c. 30. s. 11. Or by the bankrupt's friend. Birch *v.* Jervis (1828), 3 C. & P. 379. Smith *v.* Bromley. Douglas, 670. Or that it was given to induce him not to proceed with a fiat of bankruptcy. Davis *v.* Holding (1836), 1 G. T. & G. 371. But it is no defence against an innocent indorser. 5 & 6 W. 4. c. 41.

It is also a defencce between the parties if the bill was given to induce a creditor to sign a composition deed, or to refrain from opposing a debtor's discharge under the Insolvent Debtors' Act. Exparte Hall (1835), 1 Deacon, 171.

That it was made specially payable, and not otherwise or else-

where; and that it was not duly presented. Saunderson *v.* Bowes (1811), 14 East, 500. Callaghan *v.* Aylett (1811), 3 Taunton, 396. Ambrose *v.* Hopwood (1809), 2 Taunton, 61.

But the drawer and indorsers are exonerated by want of presentation, whether the acceptance was general or special. Darbyshire *v.* Parker (1805), 6 East, 3. Tindal *v.* Brown (1786), 1 T. R. 167. Smith *v.* Beckett (1810), 3 East, 187.

That a *material* alteration has been made in the bill after it was accepted and parted with by the acceptor. Cox *v.* Coxwell (1835), 2 C. M. & R. 291. Masters *v.* Millar (1793), 4 T. R. 320. S. C. 5 T. R. 367. 2 H. Black. 141. Outhwaite *v.* Lumley (1815), 4 Camp. 179. And in such case he need only plead that he did not accept the bill.

A bill which is originally void cannot be revived by a subsequent promise; but it may be if only void. Cockshott *v.* Bennett (1788), 2 T. R. 765.

Want of consideration by the holder is a very common defence. French *v.* Archer, 3 Dow. Prac. Cases, 130. Prescot *v.* Levy (1835), ibid. 403. 1 Scott, 726. Mills *v.* Oddy, 1 Gale, 92. Solly *v.* Bird (1834), 6 C. & P. 316. 2 C. & M. 516. 4 Tyrwhit, 305. The defendant may plead either a total or partial want of consideration, and pay the part due into Court. Barber *v.* Backhouse (1791), Peake, 61. Wiffen *v.* Roberts (1795), 1 Esp. 261. But it is no defence, except between the parties, that the defendant was defrauded of the bill, and that the *acceptance* was without consideration. Bramah *v.* Roberts (1835), 1 Scott, 350. And it is no defence that the amount to be deducted is a a matter not of certain calculation, as that the price of certain goods is excessive. Solomon *v.* Turner (1815), 1 Starkie, 51. Or that they were damaged. Morgan *v.* Richardson, 1 Campbell, 40., cited 7 East, 480. Obbard *v.* Betham (1830), M. & M. 483. But if the contract is avoided by fraud, that is a defence. Lewis *v.* Cotsgrave (1809), 2 Taunton, 2. Solomon *v.* Turner (1815), 1 Starkie, 52.

But if any innocent intermediate party between the plaintiff and the defendant has given a consideration for the bill, then the plea of no consideration will not be a defence. Morris *v.* Lee, Bayley on Bills, 397. Smith *v.* Knox (1800), 3 Esp. 46. Charles *v.* Marsden (1808), 1 Taunton, 224.

After a cognovit has been given, it is too late to plead want of consideration; or that at the time of the arrest part of the bill had been paid. Bligh *v.* Brewer (1834), 3 Dowl. P. C. 266. 5 Tyrwhit, 222. 1 C. M. & R. 651.

It is also a defence to show that credit has been given to the parties ultimately liable. Atkins *v.* Owen, 4 N. & M. 123. English *v.* Darley (1800), 2 B. & P. 61. Gould *v.* Robson (1807), 8 East, 576. Or to a prior indorser. Hall *v.* Cole (1836), 4 Adol. & E. 577. But it is no defence if the defendant was cognisant of time being given. Clarke *v.* Delvin (1803), 3 B. & P. 363. Withall *v.* Masterman (1809), 2 Camp. 178. Or promised to pay after learning that time had been given. Stevens *v.* Lynch (1810), 12 East, 38.

There is some doubt whether giving time to a drawer of a bill accepted for the drawer's accommodation does not exonerate the acceptor. It was decided that he was thus exonerated in Laxton *v.* Peat (1809), 2 Campbell, 185. Collet *v.* Haigh (1812), 3 Campbell, 281. But it was held doubtful in Kerrison *v.* Cooke (1813), 3 Campbell, 362. Raggett *v.* Axmore (1813), 4 Taunton, 730. Fentum *v.* Pocock (1813), 5 Taunton, 192. Although supported in Hill *v.* Read. D. & R. N. P. C. 26. Adams *v.* Gregg (1819), 2 Starkie, 531. Rolfe *v.* Wyatt, 5 C. & P. 181.

It is also a defence that the bill is drawn on a future and uncertain fund. Carlos *v.* Francourt (1794), 5 T. R. 482. Dawksee *v.* Deloraine (1771), 2 W. Black. 782. 3 Wilson, 207. Hartley *v.* Wilkinson (1815), 4 M. & S. 25.

It is also a defence against parties privy to the transaction illegal immoral, or other forbidden consideration, a copious collection of which I have given at p. 12., when treating of the drawer. And if only part of the amount of a bill is illegal, that is equally a defence. Cruikshanks *v.* Rose, 1 M. & Rob. 101. Scott *v.* Gilmore (1810), 3 Taunton, 226. Neither does substituting another bill for one given originally for an illegal consideration do away with the defence, without in the second bill the illegal portion is excluded. Chapman *v.* Black (1819), 2 B. & Ald. 588. But in such case the matter of defence must be specially pleaded. Bolton *v.* Coghlan (1835), 1 Bingham, N. C. 640.

It is of course a defence to plead the forging of the bill, however ingeniously managed. Hall *v.* Fuller (1826), 8 D. & R. 464. 5 B. & C. 750.

If the party has been so grossly careless and negligent as to facilitate materially the operations of the forger, it is no defence. Young *v.* Grote (1827), 4 Bingham, 253. 12 Moore, 484. But if the defendant has accepted or indorsed a forged bill, he is liable. Smith *v.* Chester (1787), 1 T. R. 654. Or if he has paid similar bills forged by the same party under the like circumstances. Barber *v.* Gingel (1800), 5 Esp. 60. And if the acceptor pay a lost bill under a forged indorsement, he is liable to the real payee. Cheap *v.* Harley, 3 T. R. 127. And he cannot recover his money back of the indorsee. Price *v.* Neal (1762), 1 W. Black. 399. 3 Burr. 1354. If the holder agree not to sue the acceptor, provided he makes an affidavit that the acceptance is a forgery, the acceptor cannot be sued after he has made such affidavit, although he perjure himself in so doing. Stevens *v.* Thacker (1793), Peake, 249. It is also a defence by the acceptor and drawer, if the first indorser's name was forged, even if it was on the bill when accepted; but it is no defence in an action against the acceptor to plead that the drawer's name is forged. Smith *v.* Chester (1787), 1 T. R. 654. Mackpherson *v.* Thoytes (1791), Peake, 29. Since by the acceptance he admits the validity of all the names on the face of the bill: but he is not supposed to know anything of the back of the bill. Free *v.* Hawkins (1817), Holt, C. N. P. 550.

The general issue can now, since the general rules of Hilary Term, 4 W. 4., be no longer pleaded in an action on a bill of exchange, for these declare that "in all actions on bills of exchange

and promissory notes, the plea of non-assumpsit shall be inadmissible; and that in such actions a plea in denial must traverse some matter of fact — e. g., the drawing, or making, or indorsing, or accepting, or presenting, or notice of the dishonour of the bill or note."

A set off must be pleaded; a notice will not now suffice. Graham, *v.* Partridge (1836), 1 T. & G. 754. In consequence of this regulation, the necessity no longer exists for giving notice of an intention to dispute the consideration.

Between the parties it is often a good defence, the failure or breach of a condition. Wienholt *v.* Spitta (1813), 3 Campbell, 376. Jackson *v.* Warwick (1797), 7 T. R. 121. Jeffries *v.* Austen (1726), 1 Strange, 674. Lewis *v.* Cotgrave (1809), 2 Taunton, 2. Harman *v.* Fishar (1774), Douglas, 117. And it is also a defence that the plaintiff engaged to provide for an accommodation bill. Tompson *v.* Clubley (1836), 1 T. & G. 482. But it will not do to plead a parole agreement, that the defendant was only to pay on a contingency. Adams *v.* Wordley (1836), 1 T. & G. 620.

It is a defence to an action that the holder received it of a broker who was only commissioned to get it discounted, provided the holder was aware of the fact. Haynes *v.* Foster (1833), 2 Cromp. & M. 237. Or paid it away for a debt of his own. Cranch *v.* White (1834), 6 C. & P. 767. For the broker had no right to pledge; but if the indorsee was not aware of these facts, but took the bill with ordinary care and caution, in the ordinary course of business, then it is certainly not a defence. Foster *v.* Pearson (1835), 1 C. M. & R. 849.

If the defence is, that the check is void from being drawn more than fifteen miles from the place where it was made payable, and as such is void, being contrary to the 9 G. 4. c. 49. s. 15., such need not be specially pleaded; the defendant may plead that he did not make the check. M'Dowall *v.* Lyster (1836), 2 M. & Wels. 52. If the bill or check has been given for the amount of a deposit at a sale, it will be a defence between the parties any ground which would enable the party to recover the amount if it had been paid in money. Mills *v.* Oddy (1835), 6 C. & P. 728. 2 C. M. & R. 103. 1 Gale, 92. See *Release.*

DEFENCE BY AN INDORSER.

An indorser may plead any of the defences stated in the foregoing section.

That he had not notice of non-acceptance. Walwyn *v.* St. Quintin (1797), 2 Espinasse, 516. 1 B. & P. 652. Or of non-payment. Darbyshire *v.* Parker (1805), 6 East, 3. Tindal *v.* Brown (1786), 1 T. R. 167. Muilman *v.* D'Equilar (1796), 2 H. Black. 565. Parker *v.* Gordon (1806), 7 East, 385. Smith *v.* Beckett (1810), 13 East, 187. Or that the notice was insufficient, or not from a party to the bill. Solarte *v.* Palmer (1834), 1 Scott, 2. But the indorser waives this want of notice by paying part of the bill without objecting to the omission. Harford *v.* Wilson (1807), 1 Taunton, 12. Or even by *an express* promise to pay. Borrodaile *v.*

Lowe (1811), 4 Taunton, 93. And this promise is sufficient if made to a previous holder of the bill. Potter *v.* Rayworth (1811), 13 East, 418.

He cannot dispute the signature of any previous indorsers. Lambert *v.* Oakes (1699), 1 Lord Ray. 443. Or their ability. Critchlow *v.* Parry (1809), 2 Campbell, 182.

He may plead that it was stolen, when specially indorsed. Aucher *v.* B. of England (1781), Douglas, 615. Snee *v.* Prescot (1743), 1 Atkins, 247. Sigourney *v.* Lloyd (1829), 8 B. & C. 622. 3 Y. & J. 220. 5 Bing. 525. See *Release.*

SET OFF — MUTUAL CREDIT.

A set off must be pleaded; a notice will not now suffice. Graham *v.* Partridge (1836), 1 T. & G. 754.

If a bill of exchange accepted by A. gets into the hands of B., and B. buys goods of A. without A. knowing that B. has such a bill in his possession, still B. may set off the bill against A. Henley *v.* Smith (1789), 7 Moore, 412. 3 T. R. 507. And this, although the contract were to pay ready money for the goods. Cornforth *v.* Rivett (1814), 2 M. & S. 510. But the bill of exchange *must be payable* at or before the time that A. sues B. for the value of the goods, otherwise it may not be set off. Rogerson *v.* Ladbrook (1822), 1 Bingham, 93. Belcher *v.* Lloyd (1833), 10 Bingham, 310.

And a set off is available against a bill of exchange, even in spite of a positive agreement to the contrary. Lechmere *v.* Hawkins (1798), 2 Espinasse, 626. Preston *v.* Strutton (1792), 1 Ans. 50. Taylor *v.* Okey (1806), 18 Vesey, jun. 180. See 8 Geo. 2. c. 22. s. 13., 8 G. 2. c. 24. s. 4., and 9 G. 4. c. 14. s. 4. But it is quite clear that no set off can be allowed which is in autre droit. Gale *v.* Luttrel (1826), 1 Y. & J. 180. Thus, a bill held by a trustee for another cannot be set off against a debt due by the trustee on his own account, the creditor being ignorant at the time the debt was contracted that he held such a bill. Fair *v.* M'Iver (1812), 16 East, 130.

In cases of bankruptcy, where there are cross acceptances, and a clear right of set off, a court of equity will restrict the assignees from bringing an action. Exparte Clegg (1833), 1 M. & A. 91.

CHAP. VII.

THE ACTS OF PARLIAMENT RELATING TO BILLS OF EXCHANGE.

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THE STATUTE LAW OF BILLS OF EXCHANGE.

NEARLY a century and a half have now elapsed since the legislature first began, in 1698, by the 9 & 10 of W. 3., to regulate and to further the law of merchants with regard to bills of exchange: one statute has since then gradually succeeded another, and latterly with great rapidity; many sources of doubt have been removed, many causes of hardship and wrong have been rectified; and yet the labours of parliament, in this respect, are far from being complete. Much yet remains to be accomplished, for many absurdities are still existing, many sources of anxiety and risk remaining, and yet this certainly ought not to be allowed in a country like ours, in which almost all its gigantic commerce is carried on by means of bills of exchange, and that to an amount which is hardly credible by a non-mercantile person.

It appears to me that an incalculable advantage to commerce would be attained by a digest, as well as amendment,

of the statute law relating to all negotiable securites. And with regard to these amendments, I might particularise many points well worthy of consideration; as, 1. The subject of protests. 2. The time when and where necessary. 3. The legal notices of dishonour in bills. 4. The doing away in these notices with the distinction of accommodation bills, and bills in which the drawer has funds in the hands of the drawee; which was a distinction first clearly recognised in Bickerdike *v.* Bollman in 1786 (1 T. R. 405.), a foolish attempt to prevent the effects of the laches of the holder of an accommodation bill, which many learned judges have since lamented. "I know," said Lord Ellenborough in 1806, "that it has been a subject of regret with the very learned person who was counsel for the plaintiff (Judge Chambre) in that case, that the old rule requiring notice to be given in all cases to the drawer of the non-acceptance of his bill, was so far broken in upon, but I shall anxiously resist the further extension of the exemption." Orr *v.* Maginnis, 7 East, 362. See also Dunn *v.* O'Keefe (1816), 5 M. & S. 286. 5. The time within which a foreign as well as an inland bill of exchange, payable after sight, should be forwarded for acceptance, which is at present entirely undecided, and is often productive of considerable hardship, as in Melhuish *v.* Rawdon (1832), 2 M. & Scott, 570.; in which the holder actually kept the bill locked up in his desk for four or five months, until after the drawee had failed, with funds in his hands belonging to the drawer.

Many other points also require regulating and rendering certain; such as the necessary legal notice of non-acceptance or non-payment, which is generally unknown should be directed, and a form given, a neglect or ignorance of which has often been fatal to the just claims of the holder, even when his attorney was employed to give the notice, as in Solarte *v.* Palmer (1834), 1 Bingham, 2 N. R. 194.; confirmed on appeal to the House of Lords, 2 C. & Fin. 93.

Some cases of great hardship, that of bills void ab initio, even in the hands of innocent indorsees, have only recently been removed (1835) by the 5 & 6 W. 4. c. 41. And this relief might perhaps be carried still farther, since there are one or two instances in which an innocent party is still liable to get possession of a bill absolutely void.

The cases of lost bills also require a better arrangement, for the loser has at present no relief but in equity, notwith-

standing the 9 & 10 W. 3. c. 17. s. 3.; for even if the usual precaution is adopted of dividing bank notes into two portions, and sending them by different posts, still, as the law stands at present, if one half is lost, the holder of the other moiety cannot, by the common law, compel the banker to pay, or take an indemnity. Mayor *v.* Johnson (1813), 3 Campbell, 325.

And in the case of bankers and traders giving change to strangers for large notes, checks, &c., the law certainly requires amendment; for at present, as the jury have to decide as to whether the proper and reasonable caution was employed by the holder, all kinds of contradictory verdicts have been necessarily delivered; thus, in Lawson *v.* Weston (1801), 4 Espinasse, 56, where a banker gave a stranger cash for a 500*l.* note, the loser was held not entitled to recover of a bonâ fide holder. See also Grant *v.* Vaughn (1764), 3 Burrows, 1516. Lee *v.* Newsam (1823), D. & R. N. P. C. 50. But in Snow *v.* Peacock (1826), 3 Bingham, 406., Egan *v.* Threlfal (1826), 5 D. & R. 326., Strange *v.* Wigney (1830), 6 Bingham, 677., and other cases, an opposite doctrine has been held; the amount of the note has also been invariably taken into consideration by the court, which is hardly consonant with any legal principle; for if a tradesman is not justified in taking of a stranger a bank note for 100*l.*, he ought to be also prevented from taking from a stranger one for 10*l.* or even 5*l.*, which in large towns would be a considerable impediment to trade.

Then, again, the question in the payment of foreign bills of exchange, as to who should, in cases of loss, by circuity of exchange, bear the burthen, is loudly calling for some legislative regulation; for these cases are of very frequent occurrence, especially in periods when the ordinary direct channels of communication are interrupted.

The cases when days of grace are allowable, might be also better defined: these were abolished by the Code Napoleon, and are, in consequence, no longer allowed either in France, Holland, or Genoa.

The subject of noting also, and the tax imposed by this needless and silly practice upon inland bills of exchange, is every way worthy of the attention of the senate. If it is thought necessary that a dishonoured inland bill of exchange should bear a small fine, levied upon the neglecting parties, which does not appear improper, it is only reasonable that the amount of such fine should go to those who have been

delayed, and perhaps inconvenienced, by the neglect; which might be easily effected by empowering the presentor to note it himself, before a credible attesting witness. And, in fact, the entire practice is irregular. Some bankers, I believe, rarely note inland bills, others only certain descriptions, others note them all: the charge is at present entirely arranged by the society of notaries. And again, if it was enacted that a dishonoured bill should bear a certain interest, it would be an improvement. All these and many other points, in the law of bills of exchange, should certainly be settled, for uncertainty is the parent of litigation.

It is true that, in the last ten years, several statutes have been passed for the amendment of the law, with regard to negotiable securities: thus, the 7 & 8 G. 3. c. 15., in 1827, with regard to bills payable on Good Friday; the 9 G. 3. c. 14., in 1828, with regard to written memorandums; the 2 & 3 W. 4. c. 98., in 1832, for regulating protests; the 3 & 4 W. 4. c. 98., in 1833, exempting bills from usury laws; the 5 & 6 W. 4. c. 41., to render certain bills void only in the hands of the makers; the 6 & 7 W. 4. c. 58., in 1836, regulating presentations for payment of bills accepted for honour. It would be infinitely better, however, for all these bills to be consolidated into one act, and other clauses added, something after the manner of the 9 G. 4. c. 24., in 1828, for the consolidation of the Irish law of bills of exchange, and assimilating it to that of England.

In 1830, Mr. Ward, then member for the city of London, proposed to bring in such a bill, but it was never produced.

A. D. 1381. *5 Richard 2. st. 1. c. 2.*

This statute has been justly supposed indirectly to recognise the existence of foreign bills of exchange, when, after forbidding the export of gold and silver, it directs payment to be made by "exchanges in England by good and sufficient merchants to pay beyond the seas." See Claxton *v.* Smith (1686), 2 Shower, 441—494. 5 Rich. 2. st. 1. c. 2.

In 1694, by the 5 W. & M. c. 21. s. 5., bills, &c. were first expressly alluded to, and exempted from being stamped. "Bills of exchange, &c., or any bills or notes (not sealed), for payment of money, at sight or upon demand, or at the end of certain days of payment." 5 W. & M. c. 21.

The first act on the statute book directly relating to bills of exchange is the 9 & 10 W. 3. c. 17. (1698), entitled "An Act for the better Payment of Inland Bills of Exchange."

Bills of exchange drawn in England, &c. of 5*l.* or upwards, payable at a certain number of days, &c. after acceptance, and three days after it is due party may protest the same.

"Whereas great damages and other inconveniences do frequently happen in the course of trade and commerce, by reason of delays of payment, and other neglects on inland bills of exchange in this kingdom, be it therefore enacted, &c. that all and every bill or bills of exchange drawn in or dated at and from any trading city or town, or any other place in the kingdom, dominion of Wales, or town of Berwick upon Tweed, of the sum of five pounds sterling or upwards, upon any person or persons, of or in London or any other trading city or town, or any other place (in which the said bill or bills of exchange shall be acknowledged and expressed, the said value to be received), and is and shall be drawn payable at a certain number of days, weeks, or months after date thereof; and from and after presentation and acceptance of the said bill or bills of exchange (which acceptance shall be by the underwriting the same, under the party's hand so accepting), and after the expiration of three days after the said bill or bills shall become due, the party to whom the said bill or bills are made payable, his servant, agent, or assigns, may and shall cause the said bill or bills to be protested by a notary public, and in default of such notary, by any other substantial person of the city, town, or place, in the presence of two or more credible witnesses, refusal or neglect being first made of due payment of the same, which protest shall be made and written under a fair written copy of the said bill of exchange, in the words or form following:—

The form of Protest.

"Know all men that I, A. B., on the day of , at the usual place of abode of the said , have demanded payment of the bill of the which the above is the copy, which the said did not pay, wherefore I the said do hereby protest the said bill. Dated this day of ."

Protest or notice thereof to be given in 14 days after made and charge of protest.

2. "Which protest, so made as aforesaid, shall within fourteen days after making thereof be sent, or otherwise due notice shall be given thereof from the party from whom the said bill or bills were received, who is, upon producing (receiving) such protest, to repay the said bill or bills, together with all interest and charges from the day such bill or bills were protested, for which protest shall be paid a sum not exceeding the sum of sixpence; and in default or neglect of such protest made and sent, or due notice given within the days before limited, the person so failing or ne-

glecting thereof is and shall be liable to all costs, damages, and interest, which do and shall accrue thereby.

3. "Provided nevertheless that in case any such inland bill or bills of exchange shall happen to be lost or miscarried, within the time before limited for the payment of the same, then the drawer of the said bill or bills is and shall be obliged to give another bill or bills of the same tenor with those first given the person or persons, the person or persons to whom they are and shall be so delivered, giving security, if demanded, to the said drawer to indemnify him against all persons whomsoever, in case the said bill or bills of exchange so alleged to be lost or miscarried shall be found again."

C. J. Holt truly described this act when he said, "It is very obscurely and doubtfully penned." Brough *v.* Perkins (1703), 6 Modern, 80.

"A protest on a foreign bill was part of its institution; on inland bills a protest is necessary by this statute, but was not at common law; but the statute does not take away the plaintiff's action for want of a protest, nor does it make such want a bar to the plaintiff's action. But this statute seems only in case there be no protest to deprive the plaintiff of damages or interest, and to give the drawer a remedy against him for damage if he made no protest." S. C. 1 Salkeld, 131.

This act was continued for three years by the 8 & 4 Ann, c. 9., and made perpetual by the 7 Ann, c. 25. s. 3. See also the 9 Geo. 4. c. 24., with regard to protesting bills of exchange in Ireland.

NOTING.

It is usual in cases of nonpayment for London bankers, after six o'clock on the day the bill is due, to cause inland bills to be noted, which is merely the first part of the duty required by law of the notary in protesting a bill. This duty consists of three parts: 1. Noting. 2. Demanding, 3. Protesting. In the case of inland bills, a protest being totally useless, it follows, as a natural consequence, that noting is almost equally so; and the expense usually charged stands merely upon the custom: there is neither any law nor any decision in its favour. The case of Chaters *v.* Bell (1801), 4 Espinasse, 48., cannot be considered as such, for in that case Lord Kenyon merely decided that if a foreign bill is noted and protested for nonpayment,

the protest may be formally drawn up at any time; and even this case is very doubtful, for in it a case was reserved, and the court recommended it to be turned into a special verdict, the expense of which the parties declined, as the sum in dispute was small. Selwyn, L. N. P. 379. "Noting," said J. Buller, "is unknown in the law, as distinguished from the protest; it is merely a preliminary step to the protest, and has grown into practice within these few years." Leftly *v.* Mills (1791), 4 T. R. 175. The notaries' charges, however, for noting inland bills are always allowed by the Master in the action of costs. See also 9 G. 4. c. 24. s. 13.

Although in the case of inland bills of exchange, neither noting nor protesting is necessary, the case is widely different in the case of a dishonoured foreign bill, which should certainly be taken to a notary the day it is refused acceptance or payment; and it is his business to note (Buller's Nisi Prius, 272.), demand, and protest it; and notice of this must be sent the same day to the drawer and indorsers, with a copy of the bill, if the drawer and indorsers are abroad; but merely a notice is sufficient if they are in England. Robins *v.* Gibson (1813), 1 M. & S. 288. 3 Campbell, 384. Orr *v.* Maginnis (1806), 7 East, 359. Gale *v.* Walsh (1793), 5 T. R. 239. Leftly *v.* Mills (1791), 4 T. R. 175.

It is absolutely necessary that all protests made in England should be on a stamp, otherwise they cannot be given in evidence. 55 G. 3. c. 184. And the value of the stamp must be according to the following schedule: —

	s.	*d.*
Not amounting to 20*l.* - - -	2	0
Amounting to 20*l.* and not amounting to 100*l.*	3	0
——— 100*l.* ——— 500*l.*	5	0
——— 500*l.* and upwards - -	10	0*

By the 2 & 3 W. 4. c. 98. it was declared, owing to some doubts having arisen in Mitchell *v.* Baring (1829), 10 B. & C. 4., as to which was the correct place for protesting a bill when it was made payable in one town and the drawee

* Notaries are regulated by the 41 G. 3. c. 79.: they are admitted by the Scriveners' Company, who, in this respect, seem to act as a domestic forum, much in the same way as the Inns of Court. It seems that they regulate their own charges, which for presenting and noting a bill anywhere in the city of London is eighteen-pence, and increases at the rate of one shilling a mile beyond.

lived in another, that the bill shall and may be protested in the place where the bill was made payable.

1704. 3 & 4 *Ann*, *c.* 9.

" An Act for giving like Remedy upon Promissory Notes as is now used upon Bills of Exchange.

Promissory notes may be assigned or indorsed, and action maintained thereon, as on inland bills of exchange.

" Whereas it hath been held that notes in writing signed by the party who makes the same, whereby such party promises to pay unto any other person, or his order, any sum of money therein mentioned, are not assignable or indorseable over, within the custom of merchants, to any other person; and that such person to whom the sum of money mentioned in such note is payable, cannot maintain an action, by the custom of merchants, against the person who first made and signed the same; and that any person to whom such note should be assigned, indorsed, or made payable, would not, within the said custom of merchants, maintain any action upon such note against the person who first drew and signed the same: therefore, to the intent to encourage trade and commerce, which will be much advanced if such notes shall have the same effect as inland bills of exchange, and shall be negotiated in like manner; be it enacted, &c., that all notes in writing after, &c., that shall be made and signed by any person or persons, body politic or corporate, or by the servant or agent of any corporation, banker, goldsmith, merchant, or trader, who is actually intrusted by him, her, or them to sign such promissory notes for him, her, or them, whereby such person or persons, body politic and corporate, his, her, or their servant or agent as aforesaid, doth or shall promise to pay to any other person or persons, body politic and corporate, his, her, or their order, or unto bearer, any sum of money mentioned in such note, shall be construed and taken to be, by virtue thereof, due and payable to any such person or persons, body politic and corporate, to whom the same is made payable; and also every such note payable to any person or persons, body politic and corporate, his, her, or their order, shall be assignable or indorsable over, in the same manner as inland bills of exchange are or may be, according to the custom of merchants; and that the person or persons, body politic and corporate, to whom such sum of money is or shall be by such note made payable, shall and may maintain an action for the same, in such manner as he, she, or they might do upon any inland bill of exchange, made or

drawn according to the custom of merchants, against the person or persons, body politic or corporate, who or whose servant or agent, as aforesaid, signed the same; and that any person or persons, body politic and corporate, to whom such note that is payable to any person or persons, body politic and corporate, his, her, or their order, is indorsed or assigned, or the money therein mentioned ordered to be paid by indorsement thereon, shall and may maintain his, her, or their action for such sum of money, either against the person or persons, body politic and corporate, who or whose servant or agent, as aforesaid, signed such note, or against any of the persons that indorsed the same, in like manner as in cases of inland bills of exchange; and in every such action the plaintiff or plaintiffs shall recover his, her, or their damages and costs of suit; and if such plaintiff or plaintiffs shall be nonsuited, or a verdict be given against him, her, or them, the defendant or defendants shall recover his, her, or their costs against the plaintiff or plaintiffs; and every such plaintiff or plaintiffs, defendant or defendants, respectively recovering, may sue out execution for such damages and costs by capias, fieri facias, or elegit.

How actions shall be brought.

2. "And be it further enacted, that all and every such action shall be commenced, sued, and brought within such time as is appointed for commencing or suing actions upon the case by the 21 Jac. 1. c. 16.

3. "Provided that no body politic or corporate shall have power, by virtue of this act, to issue or give out any notes by themselves or their servants, other than such as they might have issued if this act had never been made.

Party refusing to underwrite bill of exchange, such bill may be protested for non-acceptance.

4. "And whereas by the 9 & 10 W. 3. c. 17. it is among other things enacted, that from and after presentation and acceptance of the said bill or bills of exchange (which acceptance shall be by the underwriting the same under the party's hand so accepting), and after the expiration of three days after the said bill or bills shall become due, the party to whom the said bill or bills are made payable, his servant, agent, or assigns, may and shall cause the same bill or bills to be protested in manner as in the said act is enacted: And whereas by their being no provision made therein for protesting such bill or bills, in case the party on whom the same are or shall be drawn refuse to accept the same by underwriting the same under his hand, all merchants and others do refuse to underwrite such bill

or bills, or make any other than a promissory acceptance, by which means the effect and good intent of the act in that behalf is wholly evaded, and no bill or bills can be protested before or for want of such acceptance, by underwriting the same as aforesaid; for remedy whereof, be it enacted by the authority aforesaid, that in case, upon presenting any such bill or bills of exchange, the party or parties on whom the same shall be drawn shall refuse to accept the same by underwriting the same as aforesaid, the parties to whom the said bill or bills are made payable, his servant, agent, or assigns, may and shall cause the said bill or bills to be protested for non-acceptance, as in case of foreign bills of exchange, anything in the said act or any other law to the contrary notwithstanding; for which protest there shall be paid two shillings and no more.

No acceptance of inland bills of exchange to be sufficient, unless the same be underwritten, nor drawer thereof liable to costs.

5. "Provided always, &c., no acceptance of any such inland bill of exchange shall be sufficient to charge any person whatsoever, unless the same be underwritten or indorsed in writing thereupon; and if such bill be not accepted by such underwriting or indorsement in writing, no drawer of any such inland bill shall be liable to pay any costs, damages, or interest thereupon, unless such protest be made for non-acceptance thereof, and within fourteen days after such protest the same be sent, or other notice thereof be given to the party from whom such bill was received, or left in writing at his or her usual place of abode; and if such bill be accepted and not paid before the expiration of three days after the said bill shall become due and payable, then no drawer of such bill shall be compellable to pay any costs, damages, or interest thereupon, unless a protest be made and sent, or a notice thereof be given, in manner and form above mentioned; nevertheless, every drawer of such bill shall be liable to make payment of costs, damages, and interest upon such inland bill, if any one protest be made of non-acceptance or non-payment thereof, and notice thereof be sent, given, or left as aforesaid.

No protest necessary for non-payment unless the bill be drawn for 20*l.* or upwards.

6. "Provided that no such protest shall be necessary either for non-acceptance or non-payment of any inland bill of exchange, unless the value be acknowledged and expressed in such bill to be received, and unless such bill be drawn for the payment of twenty pounds sterling or upwards; and that the protest hereby required for non-acceptance shall be made by such persons as are appointed by

the said recited act to protest inland bills of exchange for non-payment thereof.

Acceptance of bill esteemed a full payment of debt.

7. "And be, &c. that if any person doth accept any such bill of exchange for or in satisfaction of any former debt or sum of money formerly due unto him, the same shall be accounted and esteemed a full and complete payment of such debt, if such person accepting any such bill for his debt doth not take his due course to obtain payment thereof, by endeavouring to get the same accepted and paid, and make his protest as aforesaid, either for non-acceptance or non-payment thereof.

8. "Provided that nothing herein contained shall extend to discharge any remedy that any person may have against the drawer, acceptor, or indorser of such bill."

By the 9th section, this very strangely drawn bill was to continue in force for three years: it was made perpetual by the 7 Ann, c. 25. s. 3.

This act was rendered necessary by the contradictory decisions of the courts at Westminster, where promissory notes, as I have before noticed, were long discountenanced, and reluctantly recognised. Two years only before the passing of this act, Lord Holt, in the case of Clarke *v.* Morton (1702), 2 Lord Raym. 758., had expressed himself very bitterly against them. See antè, p. 3.

1775. 15 *Geo.* 3. *c.* 51.

"An Act to restrain the Negotiation of Promissory Notes and Inland Bills of Exchange, under a limited Sum, within that Part of Great Britain called England."

Preamble declares that after June 24. 1775, all promissory notes, bills, &c., for less than twenty shillings shall be void and of no effect.

Sect. 2. provides that all persons uttering such notes, and being convicted thereof, shall forfeit for every such offence not less than five pounds nor more than twenty pounds.

Sect. 3. empowers a magistrate to convict, and gives the form of conviction, which conviction shall be returned to the next general quarter sessions.

Sect. 4. directs clerks of the peace, on payment of one shilling, to give copies of such conviction.

Sect. 5. gives one moiety of the penalty to the informer, and the other moiety to the poor of the parish where such offence shall have been committed; and in case of a refusal

to pay, empowers the justice to levy it by a warrant of distress on his goods, and gives the form of the warrant.

Sect. 6. empowers the magistrate to detain the offender until the distress is levied, without he gives bail for his appearance.

Sect. 7. empowers the magistrate, in case no sufficient distress can be had, to commit offenders for three months to the gaol or house of correction, unless he gives notice of appeal, and gives sufficient security for abiding by the result of such appeal, the decision on which appeal shall be final.

Sect. 8. enacts that all notes, &c. issued before June 24. 1775, for less than twenty shillings, shall be payable on demand.

Sect. 9. empowers justices, on refusal of payment of these bills, to summon, hear, determine, award payment with costs, and grant warrant for levying amount by distress.

Sect. 10. directs that no proceedings under this act shall be quashed for want of form, or removed by writ of certiorari or by other process to any of the courts of Westminster.

Sect. 11. directs that no person offending under this act shall be proceeded against except by information on oath.

Sect. 12. directs that in any action against any person offending for any thing done under this act, such action shall be commenced within three months; and in case of nonsuit, &c. the plaintiff shall pay treble costs.

Sect. 13. In force for five years.

Sect. 14. To be a public act.

This and the following bill (the 17 G. 3. c. 30.) were rendered necessary by a practice which had arisen, especially in the manufacturing districts, of issuing bank notes for very small sums, such as twenty, ten, and even five shillings; which, by filling the country with paper money, not only encouraged an unhealthy description of speculation, but tended materially to enhance the value of all the necessaries of life; and in case of the bankruptcy of the issuers, seriously injured the labouring classes, who were naturally the chief holders of these small notes.

If any person doubts the wisdom displayed in these two acts of parliament, I would recommend him to read the History of the French Assignats, issued soon after this period by the French government, and the consequent misery they entailed, some idea of which may be formed from the fact, that an assignat representing 100 francs

was long sold for one, and sometimes for half a franc. See M. Thiers's *Hisotire de la Revolution Française*, vol i. p. 194. to vol. vi. p. 190.

The object of these acts was still further effected by the 48 G. 3. c. 88.

1777. 17 *G.* 3. *c.* 30.

"An Act for further restraining the Negotiation of Promissory Notes and Inland Bills of Exchange, under a limited Sum, within that Part of Great Britain called England.

Act. 15 G. 3. recited.

"Whereas by a certain act of parliament passed in the 15 Geo. 3. intituled 'An Act to restrain the Negotiation of Promissory Notes and Inland Bills of Exchange under a limited Sum, within that Part of Great Britain called England,' all negotiable, promissory, or other notes, bills of exchange or drafts, or undertakings in writing, for any sum of money less than twenty shillings in the whole, after 24th June, 1775, were made void, and the publishing or uttering, and negotiating of any such notes, bills, &c. were made payable upon demand, &c. &c.: And whereas the said act hath been attended with very salutary effects, and in case the provisions therein contained were extended to a further sum (but yet without prejudice to the convenience arising to the public from the negotiation of promissory notes and inland bills of exchange for the remittance of money in discharge of any balance of account or other debt), the good purposes of the said act would be further advanced; be it therefore enacted, &c. that all promissory or other notes, bills of exchange, or drafts, or undertakings in writing, being negotiable or transferable, for the payment of twenty shillings, or any sum of money above that sum, less than five pounds, or on which twenty shillings or above that sum and less than five pounds shall remain undischarged, and which shall be issued in that part, &c. &c., shall specify the names and places of abode of the persons respectively to whom or to whose order the same shall be made payable, and shall bear date before or at the time of drawing or issuing thereof, and not on any day subsequent thereto, and shall be made payable within the space of twenty-one days next after the date thereof, and shall not be transferable or negotiable after the time thereby limited for payment thereof; and that every indorsement to be made thereon shall be made before the expiration of that time, and to bear date at or not before the time of making thereof, and shall specify

All negotiable promissory notes, &c. for 20*s.* and less than 5*l.* which shall be issued in England after January 1st, 1778, shall specify the names, &c. of the persons to whom payable.

the name or place of abode of the person or persons to whom or to whose order the money contained in every such note, bill, draft, or undertaking is to be paid; and that the signing of every such note, bill, draft, or undertaking, and also of every such indorsement, shall be attested by one subscribing witness at the least, and which said notes, bills of exchange, or drafts, or undertakings in writing, may be made or drawn in words to the purport or effect as set out in the schedule hereunto annexed, Nos. 1 & 2., and that all promissory or other notes, bills of exchange, or drafts, or undertakings in writing, being negotiable or transferable, for the payment of twenty shillings, or any sum of money above that sum and less than five pounds, or in which twenty shillings or above that sum and less than five pounds shall remain undischarged, and which shall be issued, &c. (in England after January 1, 1778), in every other manner than aforesaid, and also every indorsement on any such note, bill, draft, or undertaking, to be negotiated under this act, other than as aforesaid, shall, and the same are hereby declared to be absolutely void, any law, statute, usage, or custom to the contrary thereof in any wise notwithstanding.

The signing of every such note and indorsement to be attested by one witness.

2. "And be it &c. that the publishing, uttering, or negotiating (in England) of any promissory or other note, bill of exchange, draft, or undertaking in writing, being negotiable or transferable for twenty shillings or above that sum, and less than five pounds, or on which twenty shillings or above that sum or less than five pounds shall remain undischarged, and issued or made in any other manner than notes, bills, drafts, or undertakings hereby permitted to be published or negotiated as aforesaid, and also the negotiating of any of such last mentioned notes, bills, drafts, or undertakings after the time appointed for payment thereof, or before that time in any other manner than as aforesaid, by any act, contrivance, or means whatsoever, from and after January, 1778, shall be, and the same is hereby declared to be prohibited and restrained, under the like penalties and forfeitures, and to be recovered and applied in like manner as by the said act is directed with respect to the uttering or publishing or negotiating of such notes, bills of exchange, drafts, or undertakings in writing, for any sum of money not less than the sum of twenty shillings, or on which less than that sum should be, &c.

Penalty on publishing or negotiating any such notes, &c. contrary to the method prescribed by this act.

All negotiable promissory notes &c. between 20*s.* and 5*l.* which shall be issued before January 1st, 1778, shall be payable on demand.

3 "And be it, &c. that from, and immediately after the passing of this act, all promissory or other notes, bills of exchange, drafts, or undertakings in writing, for the payment of any greater sum of money than twenty shillings, and less than the sum of five pounds, or on which twenty shillings and less than the sum of five pounds shall remain undischarged, and being negotiable or transferable, as shall be issued before January 1, 1778, shall be, and the same are hereby declared and adjudged payable (in England) on demand, any terms, restrictions, or conditions therein contained to the contrary thereof notwithstanding, and shall be recoverable in such manner or by the like means as is or are directed by the said act, with respect to notes, bills of exchange, or drafts, or undertakings in writing, therein, mentioned to have issued previous to 24th June, 1775, and that all and every other the powers, provisoes, limitations, restrictions, penalties, clauses, matters, and things whatsoever in the said former act contained with respect thereto, and also with respect to all such notes, bills of exchange, drafts, or undertakings in writing, for twenty shillings or above that sum, and less than the sum of five pounds, or on which twenty shillings or above that sum and less than five pounds shall remain undischarged, issued after the 1st January 1778, and previous thereto respectively, and in like manner as if the same respectively had been the object of the said act at the time of making thereof, save so far as the same or any of them are altered or varied by this present act."

4. Continues this Act, and the 15 G. 3., for five years.

Schedule, No. 1.

[Place.] [Day.] [Month.] [Year].

"Twenty-one days after date, I promise to pay A. B. of [Place.] or his order the sum of for value received by

"Witness, E. F."

And the Indorsement, toties quoties: —

[Day.] [Month.] [Year.]

"Pay the contents to G. H. of or his order.

"A. B."

No. 2. [Place.] [Day.] [Month.]

"Twenty-one days after date, pay to A. B. of or his order, the sum of value received, as advised by .

"Witness, G. H." "C. D."

And the Indorsement, toties quoties: —

[Place.] [Day.] [Month.]

"Pay the contents to J. K. of or his order.

"Witness, L. M." "A. B."

This act made perpetual by the 27 G. 3. c. 16.; was suspended by the 37 G. 3., and 3 of G. 4. c. 76., but restored by the 7 G. 4. c. 6.

22 *G.* 3. *c.* 33. 1782.

"An Act for charging a Stamp Duty upon Inland Bills of Exchange, Promissory Notes, or other Notes payable otherwise than upon demand."

By this act the first stamp duty upon bills of exchange was imposed: this, at first, was very moderate, being for all bills or notes under fifty pounds, threepence; and for all sums over that sum, sixpence: repealed by the 23 G. 3. c. 49.

23 *G.* 3. *c.* 49. 1783.

"An Act for repealing an Act made in the 22d year of his present Majesty, intituled An Act for charging a Stamp Duty upon inland Bills of Exchange, Promissory Notes, or other Notes payable otherwise than upon demand, and for granting new Stamp Duties on Bills of Exchange, Promissory and other Notes, and also Stamp Duties on receipts:" repealed by the 31 Geo. 3. c. 25.

31 *G.* 3. *c.* 25, 1791.

"An Act for repealing the Duties now charged on Bills of Exchange, Promissory Notes and other Notes, Drafts, and Orders; and on Receipts; and for granting other Duties in lieu thereof."

33 *G.* 3. *c.* 1. 1793.

"An Act to prohibit the Circulation of Promissory or other Notes, Orders, Undertakings, or Obligations for the

Payment of any Sum or Sums of Money, or for any other consideration created and issued under or in the name of any public Authority in France.

39 *G.* 3. *c.* 107. 12 *July*, 1799.

"An Act for granting to his Majesty certain Stamp Duties on Bills of Exchange and Promissory Notes for small Sums of Money."

39 & 40 *G.* 3. *c.* 42. 16 *May*, 1800.

"An Act for the better observance of Good Friday in certain cases therein mentioned:"

Where bills of exchange and promissory notes become payable on Good Friday, the same shall be payable on the day before, and the holders thereof may protest the same for non-payment on such preceding day.

"Whereas the bank of England and bankers in general are often under the necessity of transacting business on *Good Friday*, for the purpose of receiving money for bills of exchange and promissory notes becoming payable on that day, in consequence whereof, many persons are prevented observing the same with due solemnity: now therefore, for the better observance of Good Friday, be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and of the Commons in this present Parliament assembled, and by authority of the same, that where bills of exchange and promissory notes become due and payable on Good Friday, the same shall from and after the first day of June next ensuing, be payable on the day before Good Friday, and the holder or holders of such bills of exchange or promissory notes, may note or protest the same for nonpayment on the day preceding Good Friday in like manner as if the same had fallen due and become payable on the day preceding Good Friday, and such noting and protesting shall have the same effect and operation in law as if such bills and promissory notes had fallen due and become payable on the day preceding Good Friday in the same manner as is usual in the cases of bills of exchange and promissory notes coming due on the day before any Lord's Day commonly called Sunday, and before the Feast of the Nativity, or Birthday of our Lord, commonly called Christmas Day."

43 *G.* 3. *c.* 1. 17 *December*, 1802.

"An Act for futher suspending, until the expiration of Six Weeks after the commencement of the next Session of Parliament, the operation of two Acts — 15 Geo. 3. c. 51.,

17 Geo. 3. c. 30., for restraining the negotiation of Promissory Notes and Bills of Exchange under a limited Sum in England."

43 *G.* 3. *c.* 87. 11 *July*, 1803.

"An Act to continue certain Restrictions with regard to Promissory Notes under a certain Sum in Ireland."

43 *G.* 3. *c.* 139. 11 *August*, 1803.

"An Act for preventing the forging and counterfeiting of Foreign Bills of Exchange and of Foreign Promissory Notes, and Orders for the Payment of Money, and for preventing the counterfeiting of Foreign Copper Money." This Act renders the crime a felony.

44 *G.* 3. *c.* 4. 15 *December*, 1803.

"An Act to continue the Act of 37 G. 3. c. 32., relating to the suspension of the 15th & 17th G. 3., restraining the Negotiation of Inland Bills of Exchange, &c. under a limited Sum."

44 *G.* 3. c. 6. 15 *December*, 1803.

"An Act for suspending the operation of an Irish Act of Parliament for suspending the operation of Two Irish Acts restraining the issue of Bills and Notes under a limited Sum."

44 *G.* 3. *c.* 91. 20 *July*, 1804.

"An Act to permit the issue of certain Promissory Notes by registered Bankers in Ireland."

45 *G.* 3. *c.* 25. 25 *March*, 1805.

By this act the circulation of small notes was allowed until six months after the ratification of a definite treaty of peace.

45 *G.* 3. *c.* 41. *May*, 1805.

"An Act for restraining the Negotiation of certain Promissory Notes and Inland Bills of Exchange in Ireland."

45 *G.* 3. *c.* 89. 10 *July*, 1805.

"An Act to alter and extend the Provisions of the Laws now in force, for the punishment of the Forgery of Bank

Notes, Bills of Exchange, and other Securities, to every part of Great Britain."

48 *G.* 3. *c.* 88. 23 *June*, 1808.

"An Act to restrain the Negotiation of Promissory Notes and Inland Bills of Exchange under a limited Sum in England."

Sec. 2. enacts that promissory notes for less than twenty shillings are absolutely void.

Sec. 3. enacts that issuers of such notes shall be fined not less than twenty shillings, or more than five pounds.

Sec. 4. empowers any Justice or Justices of the Peace to hear and determine informations under this act.

Sec. 5. enforces the attendance of witnesses under a fine of forty shillings.

Sec. 6. gives the form of conviction.

Sec. 7. directs Clerks of the Peace to give copy of conviction.

Sec. 8. directs the levying and application of penalties, and gives the form of warrant of distress.

Sec. 9. directs that security may be taken for appearance of offender.

Sec. 10. enacts that in case of want of distress, the offender may be committed.

Sec. 11. Parishoners may be admitted as witnesses.

Sec. 12. directs that convictions under the act shall not be removed into any of the courts of Westminster.

Sec. 13. Persons prosecuted for any act committed under this act, may plead the general issue.

51 *G.* 3. *c.* 127. 24 *July*, 1811.

"An Act for making more effectual Provision for preventing the current Gold Coin of the Realm from being paid or accepted for a greater value than the current value of such Coin, for preventing any Note or Bill of the Governor and Company of the Bank of England from being received for any smaller Sum than the Sum therein specified, and for staying Proceedings upon any Distress by tender of such Notes."

Persons under this act thus offending, were declared guilty of a misdemeanor.

55 G. 3. *c.* 6. 1 *December*, 1814.

"An Act to continue until the Twenty-fifth day of March, 1816, 'An Act for suspending the 17 G. 3., for restraining the Negotiation of Bills of Exchange under a limited Sum.'"

55 G. 3. *c.* 100. 22 *June*, 1815.

"An Act to provide for the Collection and Management of Stamp Duties payable on Bills of Exchange, Promissory Notes, Recepts, and Game Certificates in Ireland."

THE STAMP ACT.

55 G. 3 *c.* 184. 11 *July*, 1815.

"An Act for repealing the Stamp Duties on Deeds, Law Proceedings, and other written or printed Instruments, &c. &c., and for granting other Duties in lieu thereof.

Instruments having wrong stamps, but of sufficient value, to be valid.

Sec. 10. "And be it further enacted, that from and after the passing of this act, all instruments for or upon which any stamp or stamps shall have been used of an improper denomination or rate of duty, but of equal or greater value in the whole than the stamp or stamps which ought regularly to have been used thereon, shall nevertheless be deemed valid and effectual in the law, except in cases where the stamp or stamps used in such instruments shall have been specially appropriated to any other instruments, by having its name on the face thereof.

Penalty for making, accepting, or paying bills of exchange, &c. not duly stamped, 50*l*.

11. "And be it further enacted, that if any person or persons shall make, sign, or issue, or cause to be made, signed, or issued, or shall accept or pay, or cause or permit to be accepted or paid, any bill of exchange, draft, or order, or promissory note for the payment of money liable to any of the duties imposed by this act, without the same being duly stamped for denoting the duty hereby charged thereon, he, she, or they shall for every such bill, draft, order, or note, forfeit the sum of fifty pounds.

Penalty for post-dating bills of exchange, &c. 100*l*.

12. "And be it further enacted, that if any person or persons shall make and issue, or cause to be made and issued, any bill of exchange, draft, or order, or promissory note for the payment of money, at any time after date or sight, which shall bear date subsequent to the day on which it shall be issued, so that, in fact, it shall not become payable in

two months if made payable after date, or in sixty days if made payable after sight next after the day on which it shall be issued, unless the same shall be stamped for denoting the duty hereby imposed on a bill of exchange or promissory note for the payment of money at any time exceeding two months after date, or sixty days after sight, he, she, or they shall for every such bill, draft, order, or note, forfeit the sum of one hundred pounds.

Penalty for issuing unstamped drafts on bankers, without specifying the place where issued, or if post-dated, 100*l*.

13. "And for the more effectually preventing frauds and evasions of the duties hereby granted on bills of exchange, drafts, or orders for the payment of money, under colour of the exemption in favour of drafts or orders upon bankers or persons acting as bankers contained in the schedule hereunto annexed; be it further enacted, that if any person or persons shall, after August 31, 1815, make and issue, or cause to be made and issued, an bill, draft, or order for the payment of money to the bearer on demand upon any banker or bankers, or any person or persons acting as a banker or bankers, which shall be dated on any day subsequent to the day on which it shall be issued, or which shall not truly specify and express the place where it shall be issued, or which shall not in every respect fall within the said exemption, unless the same shall be duly stamped as a bill of exchange according to this act, the person or persons so offending shall for every such bill, draft, or order forfeit the sum of one hundred pounds; and if any person or persons shall knowingly receive or take any such bill, draft, or order in payment of or as a security for the sum therein mentioned, he, she, or they shall for every such bill, draft, or order forfeit the sum of twenty pounds: and if any banker or bankers, or any person or persons acting as a banker, upon whom any such bill, draft, or order shall be drawn, shall pay or cause or permit to be paid the sum of money therein expressed, or any part thereof, knowing the same to be post dated, or knowing that the place where it was issued is not truly specified and set forth therein, or knowing that the same does not in any other respect fall within the said exemption, then the banker or bankers, or person or persons so offending shall for every such bill, draft, or order forfeit the sum of 100*l*., and moreover shall not be allowed the money so paid, or any part thereof, in account against the person or persons by or for whom such bill, draft, or order shall be drawn, or his or their assignees or creditors, in case of bankruptcy or insolvency, or any other person or persons claiming under him, or her, them."

Sec. 14. allows bankers or other persons to reissue bills duly stamped, payable on demand, for any sum not exceeding 100*l.*

Sec. 15. confirms the banker to reissue such notes, although the firm may be altered.

Sec. 16. enacts that notes reissuable under the 48 or 58 G. 3. shall continue reissuable till the end of three years from the date. Imposes a penalty of 50*l.* on frauds.

Sec. 17. relates to the issue of small notes in Scotland.

Sec. 18. declares the practice of issuing bank notes with printed dates illegal, and imposes a penalty of 50*l.* on those who shall contravene this clause.

Sec. 19. relates to the above regulated reissuable notes.

Sec. 20. exempts the notes, &c. of the Bank of England.

Sec. 21. directs the Bank of England to pay a composition and give an account in lieu thereof.

Sec. 22. directs that when the Bank of England shall resume cash payments, that then they shall make a new composition.

Sec. 23. allows the Bank of Scotland, and the British Linen Company in Scotland, to issue small notes unstamped in consideration of their accounting and paying for the same.

Sec. 24. enacts that re-issuable notes shall not be reissued by bankers or others without they take out a yearly licence for that purpose.

Sec. 25. declares that no Scotch banker need take out more than four licences.

Sec. 26. declares that those bankers who, under the 48 G. 3., were entitled to have two or more towns included in one licence, shall be entitled to the same privilege under this act.

Sec. 27. directs that persons applying for licences shall deliver specimens of their notes.

Sec. 28. declares that such licences shall continue in force notwithstanding alterations in partnerships.

Sec. 29. enacts that all "promissory notes for the payment of money to the bearer on demand, made out of Great Britain, or purporting to be made out of Great Britain, purporting to be made by persons resident out of Great Britain, shall not be negotiable, or be negotiated, or circulated, or paid in Great Britain, whether the same shall be made payable in Great Britain or not, unless the same shall have paid such duty, and be stamped in such manner as the law re-

quires for promissory notes of the like tenor and value made in Great Britain."

The clause then imposes a penalty of 20*l.* on all persons who shall circulate, receive, or pay such note.

By a schedule annexed to this act, the following stamp duties on bills of exchange were imposed: —

On inland bills of exchange, drafts, orders to bearer, or to order, either on demand or otherwise, not exceeding two months after date, or sixty days after sight, of any sum of money —

£ s.		£ s.	£ s. d.
amounting to 2 0	and not exceeding	5 5	- 0 1 0
exceeding 5 5	—	20 0	- 0 1 6
20 0	—	30 0	- 0 2 0
— 30 0	—	50 0	- 0 2 6
— 50 0	—	100 0	- 0 3 6
— 100 0	—	200 0	- 0 4 6
— 200 0	—	300 0	- 0 5 6
— 300 0	—	500 0	- 0 6 0
— 500 0	—	1000 0	- 0 8 6
— 1000 0	—	2000 0	- 0 12 6
— 2000 0	—	3000 0	- 0 15 0
— 3000 0	-	-	- 1 5 0

Inland bills, drafts, orders payable at any time exceeding two months after date or sixty days after sight —

£ s.		£ s.	£ s. d.
amounting to 2 0	and not exceeding	5 5	- 0 1 6
exceeding 5 5	—	20 0	- 0 2 0
— 20 0	—	30 0	- 0 2 6
— 30 0	—	50 0	- 0 3 6
— 50 0	—	100 0	- 0 4 6
— 100 0	—	200 0	- 0 5 0
— 200 0	—	300 0	- 0 6 0
— 300 0	—	500 0	- 0 8 6
— 500 0	—	1000 0	- 0 12 6
— 1000 0	—	2000 0	- 0 15 0
— 2000 0	—	3000 0	- 1 5 0
— 3000 0	- -	-	- 1 10 0

WRITE OFF'S.

Inland bills, drafts, or orders for the payment of money, though not made payable to bearer or order, if the same

shall be delivered to the payee or some person on his or her behalf, shall pay the same stamp duty as a bill of exchange payable to bearer.

Inland bills of exchange, drafts, or orders for the payment of any sum weekly, monthly, or at any stated periods, if made payable to the bearer or order, or if delivered to the payee, or some person in his or her behalf, where the total amount of the money thereby made payable shall be specified therein, or can be ascertained therefrom. The same duty as on a bill payable to bearer or order on demand for a sum equal to such total amount. And also where the total amount of the money thereby made payable shall be indefinite, the same duty as on a bill on demand for the sum therein expressed only.

And the following instruments shall be deemed and taken to be inland bills, drafts, or orders for the payment of money within the intent and meaning of this schedule: —

All drafts or orders for the payment of any sum of money by a bill or promissory note, or for the delivery of any such bill or note in payment or satisfaction of any sum of money, where such drafts or orders shall require the payment or delivery to be made to the bearer or to order, or shall be delivered to the payee or some person on his behalf.

All receipts given by any banker or bankers, or other person or persons, for money received, which shall entitle or be intended to entitle the person or persons paying the money, or the bearer of such receipts to receive the like sum from any third person or persons.

And all bills, drafts, or orders for the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen if the same shall be made payable to the bearer or to order, or if the same shall be delivered to the payee, or some person on his or her behalf.

Foreign bill of exchange (or bill drawn in but payable out of Great Britain), if drawn singly and not in a set, the same duty as an inland bill.

Foreign bills of exchange, drawn in sets according to the custom of merchants, for every bill of each set, where the sum made payable thereby —

	£		£	s.	d.
shall not exceed 100	-	-	-	1	6
and where it shall exceed	100	and not exceed	200	3	0
—	200	—	500	4	0
—	500	—	1000	5	0
—	1000	—	2000	7	6
—	2000	—	3000	10	0
—	3000	-	-	15	0

Exemptions from the preceding and all other Stamp Duties.

All bills of exchange, &c. issued by the company of the Bank of England.

All bills drawn by naval officers, &c. under the authority of the 35 G. 3.

All bills drawn by the commissioners of the navy or victualling board, or transport board.

All drafts on a banker within ten miles of the Bank, provided correctly dated, and not directing payment in bills or promissory notes.

All bills drawn by the paymasters of the army for their pay or allowance.

BANKERS' NOTES.

And by the same act all promissory notes payable *to the bearer on demand* of any sum of money were to be on stamps —

	£	s.		£	s.		£	s.	d.
not exceeding	1	1	- -	-		-	0	0	5
exceeding	1	1	and not exceeding	2	2	-	0	0	10
—	2	2	—	5	5	-	0	1	3
—	5	5	—	10	0	-	0	1	9
—	10	0	—	20	0	-	0	2	0
—	20	0	—	30	0	-	0	3	0
—	30	0	—	50	0	-	0	5	0
—	50	0	—	100	0	-	0	8	6

Which said notes may be reissued after payment thereof, as often as shall be thought fit. For stamps on protests imposed by this act, see p. 90.

By this act a bill drawn in this country upon a foreign house requires a stamp. Anner *v.* Clarke (1836), 2 C. M. & R. 466. But a bill drawn abroad and accepted in England does not require a stamp. If the stamp employed is of inferior value to that required by the act, the bill of course is invalid; but if of superior value it is good See sec. 10.

If the stamp is one applicable to another purpose, as for receipts, &c., it may still, by the act 37 G. 3. c. 136. s. 4. be stamped by the proper stamp, provided it is a stamp of equal or superior value to the required stamp, on payment of the proper duty, and 40*s.* if the bill is not due, and 10*l.* if overdue. Chamberlain *v.* Porter (1804), 1 N. R. 30.

An acceptor having paid the bill, the negotiability of that bill is at an end, for it requires a fresh stamp; but if a drawer or indorsee take it up, he can certainly indorse it over to another, who can recover against the acceptor. Callow *v.* Lawrence (1814), 3 M. & S. 95.

58 *G.* 3. *c.* 93. 10 *June*, 1818.

"An Act to afford relief to the bonâ fide holders of Negotiable Securities without Notice that they were given for a usurious consideration."

"Whereas by the laws now in force, all contracts and assurances whatsoever for the payment of money made for a usurious consideration are utterly void, and whereas, in the course of mercantile transactions, negotiable securities often pass into the hands of persons who have discounted the same without any knowledge of the original consideration for which the same were given, and the avoidance of such securities in the hands of such bonâ fide indorsees without notice is attended with great hardship and injustice; for remedy thereof, be it enacted, by the King's most excellent Majesty, by and with, &c., That no bill of exchange or promissory note that shall be drawn or made after the passing of this act, though it may have been given for a usurious consideration, or upon a usurious contract, be void in the hands of an indorsee for valuable consideration, unless such indorsee had at the time of discounting or paying such consideration for the same actual notice that such bill of exchange or promissory note had been originally given for a usurious consideration or upon a usurious contract."

Bill of exchange or promissory note given for usurious consideration not void in the hands of an indorsee if he had no notice thereof.

This act was the first legislative attempt to relieve an innocent indorsee from the loss attendant upon getting possession of a bill void ab initio: this wise purpose was still further effected by the 5 & 6 W. 4. c. 41.

1 & 2 *G.* 4. *c.* 78. 2 *July*, 1821.

"An Act to regulate Acceptances of Bills of Exchange."

"Whereas, according to law, as hath been adjudged, where a bill is accepted payable at a banker's, the accept-

ance thereof is not a general but a qualified acceptance; and whereas a practice hath very generally prevailed among merchants and traders so to accept bills, and the same have among such persons been very generally considered as bills generally accepted, and accepted without qualification, and whereas many persons have been and may be much prejudiced and misled by such practice and understanding, and persons accepting bills may relieve themselves from all inconvenience by giving such notice as hereinafter mentioned, of their intention to make only a qualified acceptance thereof, be it therefore, &c., by &c., That from and after the 1st day of August, 1821, if any person shall accept a bill of exchange payable at the house of a banker or other place, without further expression in his acceptance, such acceptance shall be deemed and taken to be, to all intents and purposes, a general acceptance of such bill; but if the acceptor shall, in his acceptance, express that he accepts the bill payable at a banker's house, or other place only, and not otherwise or elsewhere, such acceptance shall be deemed and taken to be, to all intents and purposes, a qualified acceptance of such bill, and the acceptor shall not be liable to pay the same bill, except on default of payment, when such payment shall have been first duly demanded at such banker's house or other place."

Bills accepted payable at a banker's or other place deemed a general acceptance; bills payable at a banker's only deemed a qualified acceptance.

Acceptance to be in writing on the bill.

2. "And be it, &c., That from and after the said first day of August, no acceptance on any inland bill of exchange shall be sufficient to charge any person, unless such acceptance shall be in writing on such bill, or if there be more than one part of such, on one of the said parts."

7 *G.* 4. *c.* 6. 1826.

"An Act to limit, and after a certain Period to prohibit, the issuing of Promissory Notes under a limited Sum in England."

The Preamble repeals the 3 G. 4. c. 70.

Sec. 2. allowed of the circulation of notes under five pounds until the fifth of April, 1829.

Sec. 3. imposes a penalty of 20*l.* on any person issuing any bank note for less than 5*l.* after the 5th of April, 1829, "made, drawn, or indorsed, in any other manner than as is directed by the 17 Geo. 3. c. 30."

Sec. 5. "And be it further enacted, that the penalties which shall or may be incurred under any of the provisions

of this act, and which are in lieu of the penalties imposed (by the 17 G. 3. c. 30), may be sued for, recovered, levied, mitigated, and applied in such and the same manner as any other penalties imposed by any of the laws now in force, relating to the duties under the management of the commissioners of stamps."

Sec. 6. enacts that the bank of England shall deliver to the treasury a monthly account of their notes under *5l.* in circulation, and such accounts to be published in the Gazette, and laid before parliament.

Sec. 7. enacts that the commissioners of stamps shall not stamp any notes for less than *5l.*

Sec. 8. indemnifies them for certain illegal proceedings.

Sec 9. exempts from the operation of this act all bankers' checks.

Sec. 10. directs that all notes under twenty pounds shall be payable at the place where they are issued.

7 & 8 *G.* 4. c 15. 12 *April*, 1827.

"An Act for declaring the Law in relation to Bills of Exchange and Promissory Notes becoming payable on Good Friday or Christmas Day."

Preamble refers to 39 & 40. G. 3. c. 42., &c.

Where bills of exchange becoming due on the day preceding Good Friday or Christmas day are dishonoured, notice thereof may be given on the day after such Good Friday, &c.

In all cases where bills of exchange or promissory notes shall be payable, either under or by virtue of the said recited act or otherwise, on the day preceding any Good Friday or the day preceding any Christmas day, it shall not be necessary for the holder or holders of such bills of exchange or promissory notes to give notice of the dishonour thereof, until the day next after such Good Friday or Christmas day, and that whenever Christmas day shall fall on a Monday, it shall not be necessary for the holder or holders of such bills of exchange or promissory notes as shall be payable on the preceding Saturday to give notice of the dishonour thereof until the Tuesday next after such Christmas day, and that every such notice given as aforesaid shall be valid and effectual to all intents and purposes.

Bills of exchange becoming due on fast or thanksgiving days to be payable on the day next preceding such

2. "And whereas similar doubts have arisen with respect to bills of exchange and promissory notes falling due upon days appointed by his Majesty's proclamation for solemn fasts or days of thanksgiving, or upon the days next preceding such days respectively, and it is expedient that such doubts should be removed, be it therefore further declared

fast or thanksgiving day.

and enacted, That from and after the said 10th day of April, 1827, in all cases where bills of exchange and promissory notes shall become due and payable on any day appointed by his Majesty's proclamation for a day of solemn fast, or a day of thanksgiving, the same shall be payable on the day next preceding such day of fast or day of thanksgiving, and in case of non-payment, may be noted and protested on such preceding day, and that as well in such cases as in the cases of bills of exchange and promissory notes becoming due and payable on the day preceding any such day of fast or day of thanksgiving, it shall not be necessary for the holder or holders of such bills of exchange or promissory notes to give notice of the dishonour thereof, until the day next after such day of fast or day of thanksgiving, and that whensoever such day of fast or day of thanksgiving shall be appointed on a Monday, it shall not be necessary for the holder or holders of such bills of exchange or promissory notes as shall be payable on the preceding Saturday, to give notice of the dishonour thereof until the Tuesday next after such day of fast or day of thanksgiving respectively; and that every such notice so given as aforesaid shall be valid and effectual to all intents and purposes."

Good Friday, Christmas day, &c., as regards bills of exchange, to be treated as the Lord's day.

3. "And be it, &c. Good Friday, Christmas day, and every such day of fast and thanksgiving, so appointed by his Majesty, is and shall for all other purposes whatever, as regards bills of exchange and promissory notes, be treated and considered as the Lord's day, commonly called Sunday."

4. This act not to extend to Scotland.

9 *G.* 4. *c.* 14. 9 *May*, 1828.

"An Act for rendering a written Memorandum necessary to the Validity of certain Promises and Engagements."

English act, 21 Jac. 1. c. 16.

"Whereas by an act passed in England in the twenty-first year of the reign of King James the First, it was among other things enacted, that all actions of account and upon the case, other than such accounts concern the trade of merchandise between merchant and merchant, their factors or servants, all actions of debt grounded upon any lending or contract without specialty, and all actions of debt for arrearages of rent, should be commenced within three years after the end

of the then present session of parliament, or within six years next after the cause of such actions or suit, and not after: and whereas a similar enactment is contained in an act passed in Ireland in the tenth year of the reign of King Charles the First: and whereas various questions have arisen in actions founded on simple contract, as to the proof and effect of acknowledgments and promises offered in evidence for the purpose of taking cases out of the operation of the said enactments; and it is expedient to prevent such questions, and to make provision for giving effect to the said enactments and to the intention thereof: be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that in actions of debt or upon the case, grounded upon any simple contract, no acknowledgment or promise by words only shall be deemed sufficient evidence of a new or continuing contract, whereby to take any case out of the operation of the said enactments or either of them, or to deprive any party of the benefit thereof, unless such acknowledgment or promise shall be made or contained by or in some writing to be signed by the party chargeable thereby; and that where there shall be two or more joint contractors, or executors or administrators of any contractor, no such joint contractor, executor, or administrator shall lose the benefit of the said enactments or either of them, so as to be chargeable in respect or by reason only of any written acknowledgment or promise made and signed by any other or others of them: provided always, that nothing herein contained shall alter or take away or lessen the effect of any payment of any principal or interest made by any person whatsoever: provided also, that in actions to be commenced against two or more such joint contractors, or executors or administrators, if it shall apear at the trial or otherwise that the plaintiffs, though barred by either of the said recited acts or this act, as to one or more of such joint contractors, or executors or administrators, shall nevertheless be entitled to recover against any other or others of the defendants, by virtue of a new acknowledgment or promise, or otherwise, judgment may be given and costs allowed for the plaintiff as to such defendant or defendants against whom he shall recover, and for the other defendant or defendants against the plaintiff.

Irish Act, 10 Car. 1. Sess. 2. c. 16.

In actions of debt or upon the case, no acknowledgment shall be deemed sufficient unless it be in writing, or by part payment.

Joint contractors.

Proviso for the case of joint contractors.

Pleas in abatement.

2. "And be it further enacted, that if any defendant or defendants in any action on any simple contract shall plead any matter in abatement, to the effect that any other person or persons ought to be jointly sued, and issue be joined on such plea, and it shall appear at the trial that the action could not, by reason of the said recited acts or this act, or of either of them, be maintained against the other person or persons named in such plea, or any of them, the issue joined on such plea shall be found against the party pleading the same.

Indorsements of payment.

3. "And be it further enacted, that no indorsement or memorandum of any payment written or made after the time appointed for this act to take effect, upon any promissory note, bill of exchange, or other writing, by or on the behalf of the party to whom such payment shall be made, shall be deemed sufficient proof of such payment so as to take the case out of the operation of either of the said statutes.

Simple contract debts alleged by way of set-off.

4. "And be it further enacted, that the said recited acts and this act shall be deemed and taken to apply to the case of any debt or simple contract alleged by way of set-off on the part of any defendant, either by plea, notice, or otherwise.

Confirmation of promises made by infants.

5. "And be it further enacted, that no action shall be maintained whereby to charge any person upon any promise made after full age to pay any debt contracted during infancy, or upon any ratification after full age of any promise or simple contract made during infancy, unless such promise or ratification shall be made by some writing signed by the party to be charged therewith.

Representations of character.

6. "And be it further enacted, that no action shall be brought whereby to charge any person upon or by reason of any representation or assurance made or given concerning or relating to the character, conduct, credit, ability, trade, or dealings of any other person, to the intent or purpose that such other person may obtain credit, money, or goods upon, unless such representation or assurance be made in writing, signed by the party to be charged therewith.

29 Car. 2. c. 3.

7. "And whereas by an act passed in England in the twenty-ninth year of the reign of King Charles the Second, intituled 'An Act for the Prevention of Frauds and Perjuries,' it is among other things enacted, that from and after the 24th day of June, 1677, no contract for the

sale of any goods, wares, and merchandises, for the price of 10*l.* sterling or upwards, shall be allowed to be good, except the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain, or in part payment, or that some note or memorandum in writing of the said bargain be made and signed by the parties to be charged by such contract, or their agents thereunto lawfully authorised: and whereas a similar enactment is contained in an act passed in Ireland in the seventh year of the reign of King William the Third: and whereas it has been held, that the said recited enactments do not extend to certain executory contracts for the sale of goods, which nevertheless are within the mischief thereby intended to be remedied; and it is expedient to extend the said enactments to such executory contracts; be it enacted, that the said enactments shall extend to all contracts for the sale of goods of the value of 10*l.* sterling and upwards, notwithstanding the goods may be intended to be delivered at some future time, or may not at the time of such contract be actually made, procured, or provided, or fit or ready for delivery, or some act may be requisite for the making or completing thereof, or rendering the same fit for delivery.

Irish act, 7 W. 3. c. 12.

Powers of recited acts extended to contracts for goods of 10*l.* or upwards, although the delivery be not made.

8. "And be it further enacted, that no memorandum or other writing made necessary by this act shall be deemed to be an agreement within the meaning of any statute relating to the duties of stamps.

Memorandums exempted from stamps.

9. "And be it further enacted, that nothing in this act contained shall extend to Scotland."

Not to extend to Scotland.

9 *G.* 4. *c.* 23. 19 *June*, 1828.

"An Act to enable Bankers in England to issue certain unstamped Promissory Notes and Bills of Exchange, upon Payment of a Composition in lieu of the Stamp Duties thereon.

"Whereas it is expedient to permit all persons carrying on the business of bankers in England (except within the City of London, or within three miles thereof), to issue their promissory notes payable to bearer on demand, or to order within a limited period after sight, and to draw bills of exchange payable to order on demand, or within a limited period after sight or date, on unstamped paper, upon payment of a composition in lieu of the Stamp duties which

would otherwise be payable upon such notes and bills respectively, and subject to the regulations hereinafter mentioned; be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal and commons in this present parliament assembled, and by the authority of the same, that from and after the 1st day of July, 1828, it shall be lawful for any person or persons carrying on the business of a banker or bankers in England (except within the City of London, or within three miles thereof), having first duly obtained a licence for that purpose, and given security by bond in manner hereinafter mentioned, to issue, on unstamped paper, promissory notes for any sum of money amounting to five pounds or upwards, expressed to be payable to the bearer on demand, or to order, at any period not exceeding seven days after sight; and also to draw and issue, on unstamped paper, bills of exchange, expressed to be payable to order on demand, or at any period not exceeding seven days after sight, or twenty-one days after the date thereof; provided such bills of exchange be drawn upon a person or persons carrying on the business of a banker or bankers in London, Westminster, or the Borough of Southwark, or provided such bills of exchange be drawn by any banker or bankers, at a town or place where he or they shall be duly licensed to issue unstamped notes and bills under the authority of this act, upon himself or themselves, or his or their copartner or copartners, payable at any other town or place where such banker or bankers shall also be duly licensed to issue such notes and bills as aforesaid.

Certain bankers may issue unstamped promissory notes and bills of exchange, subject to the regulations herein mentioned.

2. "And be it enacted, that it shall be lawful for any two or more of the commissioners of stamps to grant to all persons carrying on the business of bankers in England (except as aforesaid), who shall require the same, licences authorising such persons to issue such promissory notes, and to draw and issue such bills of exchange as aforesaid, on unstamped paper; which said licences shall be and are hereby respectively charged with a stamp duty of thirty pounds for every such licence.

Commissioners of stamps may grant licences to issue unstamped notes and bills.

3. "And be it further enacted, that a separate licence shall be taken out in respect of every town or place where any such unstamped promissory notes or bills of exchange as aforesaid shall be issued or drawn: provided always, that no person or persons shall be obliged to take out more than

A separate licence to be taken for every place where such notes or bills shall be issued, but not

four licences in all for any number of towns or places in England; and in case any person or persons shall issue or draw such unstamped notes or bills as aforesaid, at more than four different towns or places, then, after taking out three distinct licences for three of such towns or places, such person or persons shall be entitled to have all the rest of such towns or places included in a fourth licence.

to exceed four licences for any number of such places

4. "And be it further enacted, that every licence granted under the authority of this act shall specify all the particulars required by law to be specified in licences to be taken out by persons issuing promissory notes payable to bearer on demand, and allowed to be re-issued; and every such licence which shall be granted between the 10th day of October and the 11th day of November in any year shall be dated on the 11th day of October, and every such licence which shall be granted at any other time shall be dated on the day on which the same shall be granted; and any such licence shall (notwithstanding any alteration which may take place in any copartnership of persons to whom the same shall be granted) have effect and continue in force from the day of the date thereof until the 10th day of October then next following, both inclusive, and no longer.

Regulations respecting licences.

5. "Provided always, and be it further enacted, that where any banker or bankers shall have obtained the licence required by law for issuing promissory notes payable to bearer on demand, at any town or place in England, and during the continuance of such licence shall be desirous of taking out a licence to issue at the same town or place unstamped promissory notes and bills of exchange under the provisions of this act, it shall be lawful for the commissioners of stamps to cancel and allow as spoiled the stamp upon the said first-mentioned licence, and in lieu thereof to grant to such banker or bankers a licence under the authority of this act; and every such last-mentioned licence shall also authorise the issuing and reissuing of all promissory notes payable to the bearer on demand, which such banker or bankers may by law continue to issue or reissue at the same town or place, on paper duly stamped.

Commissioners may cancel licences already taken out, and grant licences under this act in lieu thereof.

6. "Provided always, and be it further enacted, that if any banker or bankers, who shall take out a licence under the authority of this act, shall issue, under the authority either of this or any other act, any unstamped promissory notes for payment of money to the bearer on demand, such banker or bankers shall, so long as he or they shall continue licensed as aforesaid, make and issue on unstamped paper all his or

Bankers while licensed under this act shall not issue, for the first time, notes on stamped paper.

their promissory notes for payment of money to the bearer on demand, of whatever amount such notes may be; and it shall not be lawful for such banker or bankers, during the period aforesaid, to issue for the first time any such promissory note as aforesaid on stamped paper.

Bankers licensed to issue unstamped notes or bills shall give security, by bond, for the due performance of the conditions herein contained.

7. "And be it further enacted, that before any licence shall be granted to any person or persons to issue or draw any unstamped promissory notes or bills of exchange under the authority of this act, such person or persons shall give security, by bond, to his Majesty, his heirs and successors, with a condition, that if such person or persons do and shall from time to time enter or cause to be entered in a book or books to be kept for that purpose, an account of all such unstamped promissory notes and bills of exchange as he or they shall so as aforesaid issue or draw, specifying the amount or value thereof respectively, and the several dates of the issuing thereof; and in like manner also, a similar account of all such promissory notes as, having been issued as aforesaid, shall have been cancelled, and the dates of the cancelling thereof, and of all such bills of exchange as, having been drawn or issued as aforesaid, shall have been paid and the dates of the payment thereof; and do and shall from time to time, when thereunto requested, produce and show such accounts to, and permit the same to be examined and inspected by, the said commissioners of stamps, or any officer of stamps appointed under the hands and seals of the said commissioners for that purpose; and also do and shall deliver to the said commissioners of stamps half-yearly, that is to say, within fourteen days after the first day of January and the first day of July in every year, a just and true account in writing, verified upon the oaths or affirmation, (which any justice of the peace is hereby empowered to administer,) to the best of the knowledge and belief of such person or persons, and of his or their cashier, accountant, or chief clerk, or of such of them as the said commissioners shall require, of the amount or value of all unstamped promissory notes and bills of exchange, issued under the provisions of this or any former act, in circulation within the meaning of this act on a given day, that is to say, on Saturday in every week, for the space of half a year prior to the half-yearly day immediately preceding the delivery of such account, together with the average amount or value of such notes and bills so in circulation, according to such account; and also do and shall pay or cause to be paid to the receiver-general of

stamp duties in Great Britain, or to some other person duly authorised by the commissioners of stamps to receive the same, as a composition for the duties which would otherwise have been payable for such promissory notes and bills of exchange issued or in circulation during such half year, the sum of three shillings and sixpence for every one hundred pounds, and also for the fractional part of one hundred pounds of the said average amount or value of such notes and bills in circulation, according to the true intent and meaning of this act; and on due performance thereof such bond shall be void, but otherwise the same shall be and remain in full force and virtue.

For what period notes and bills are to be deemed in circulation.

8. "And be it further enacted, that every unstamped promissory note payable to the bearer on demand, issued under the provisions of this act, shall, for the purpose of payment of duty, be deemed to be in circulation from the day of the issuing to the day of the cancelling thereof, both days inclusive, excepting nevertheless the period during which such note shall be in the hands of the banker or bankers who first issued the same, or by whom the same shall be expressed to be payable: and that every unstamped promissory note payable to order, and every unstamped bill of exchange so as aforesaid issued, shall for the purpose aforesaid be deemed to be in circulation from the day of the issuing to the day of the payment thereof, both days inclusive: provided always, that every such promissory note payable to order, and bill of exchange as aforesaid, which shall be paid in less than seven days from the issuing thereof, shall, for the purpose aforesaid, be included in the account of notes and bills in circulation on the Saturday next after the day of the issuing thereof, as if the same were actually in circulation.

Regulations respecting the bonds to be given pursuant to this act.

9. "And be it further enacted, that in every bond to be given pursuant to the directions of this act, the person or persons intending to issue or draw any such unstamped promissory notes and bills of exchange as aforesaid, or such and so many of the said persons as the commissioners of stamps shall require, shall be the obligers; and every such bond shall be taken in the sum of 100*l.* or in such larger sum as the said commissioners of stamps may judge to be the probable amount of the composition or duties that will be payable from such person or persons, under or by virtue of this act, during the period of one year; and it shall be lawful for the said commissioners to fix the time or times of

payment of the said composition or duties, and to specify the same in the condition to every such bond; and every such bond may be required to be renewed from time to time, at the discretion of the said commissioners, and as often as the same shall be forfeited, or the parties to the same or any of them shall die, become bankrupt or insolvent, or reside in parts beyond the seas.

Fresh bonds to be given on alterations of copartnerships.

10. "And be it further enacted, that if any alteration shall be made in any copartnership of persons who shall have given any such security by bond as by this act is directed, whether such alteration shall be caused by the death or retirement of one or more of the partners of the firm, or by the accession of any additional or new partner or partners, a fresh bond shall be given by the remaining partner or partners, or the persons composing the new copartnership, as the case may be, which bond shall be taken as a security for the duties which may be due and owing, or may become due and owing, in respect of the unstamped notes and bills which shall have been issued by the persons composing the old copartnership, and which shall be in circulation at the time of such alteration, as well as for duties which shall or may be or become due or owing in respect of the unstamped notes and bills issued or to be issued by the persons composing the new copartnership; provided that no such fresh bond shall be rendered necessary by any such alteration as aforesaid in any copartnership of persons exceeding six in number, but that the bonds to be given by such last-mentioned copartnerships shall be taken as securities for all the duties they may incur so long as they shall exist, or the persons composing the same, or any of them, shall carry on business in copartnership together, or with any other person or persons, notwithstanding any alteration in such copartnership; saving always the power of the said commissioners of stamps to require a new bond in any case where they shall deem it necessary for better securing the payment of the said duties.

Penalty on bankers neglecting to renew their bonds.

11. "And be it further enacted, that if any person or persons who shall have given security, by bond, to his Majesty, in the manner hereinbefore directed, shall refuse or neglect to renew such bond when forfeited, and as often as the same is by this act required to be renewed, such person or persons so offending shall for every such offence forfeit and pay the sum of 100*l*.

Penalty for post-dating unstamped notes or bills.

12. "And be it further enacted, that if any person or persons who shall be licensed under the provisions of this act shall draw or issue, or cause to be drawn or issued, upon unstamped paper, any promissory note payable to order, or any bill of exchange which shall bear date subsequent to the day on which it shall be issued, the person or persons so offending shall, for every such note or bill so drawn or issued, forfeit the sum of 100*l*.

This act not to exempt from penalties any persons issuing unstamped notes or bills not in accordance herewith.

13. "Provided always, and be it further enacted, that nothing in this act contained shall extend or be construed to extend to exempt or relieve from the forfeitures or penalties imposed by any act or acts now in force, upon persons issuing promissory notes or bills of exchange not duly stamped as the law requires, any person or persons who under any colour or pretence whatsoever shall issue any unstamped promissory note or bill of exchange, unless such person or persons shall be duly licensed to issue such note or bill under the provisions of this act; and such note or bill shall be drawn and issued in strict accordance with the regulations and restrictions herein contained.

Recovery of penalties.

14. "And be it further enacted, that all pecuniary forfeitures and penalties which may be incurred under any of the provisions of this act shall be recovered for the use of his Majesty, his heirs and successors, in his Majesty's court of exchequer at Westminster, by action of debt, bill, plaint, or information, in the name of his Majesty's attorney or solicitor general in England.

Not to affect the privileges of the bank of England.

15. "Provided always, and be it further enacted, that nothing in this act contained shall extend or be construed to extend to prejudice, alter, or affect any of the rights, powers, or privileges of the governor and company of the Bank of England.

Where any bankers taking out licences under this act shall have stamps in their possession which will become useless, the Commissioners may cancel such stamps and make allowance for the same.

16. "And whereas it may happen that bankers who may be desirous to issue unstamped promissory notes payable to bearer on demand, under the provisions of this act, may have provided themselves with stamps for such notes, which may not have been issued, and which may by this act be rendered useless or unnecessary, and it is expedient to enable the commissioners of stamps to cancel and allow such stamps in manner hereinafter mentioned; be it therefore enacted, that where any banker or bankers, who shall take out a licence under the authority of this act, shall have in his or their possession stamps for reissuable promissory notes payable to the bearer on demand, which shall be rendered

useless or unnecessary in consequence of such banker or bankers electing to issue such notes on unstamped paper under the provisions of this act, it shall be lawful for the said commissioners of stamps, and they are hereby authorised and empowered to cancel and allow such stamps so as aforesaid rendered useless or unnecessary, and to repay the amount or value thereof in money, deducting therefrom the sum of 1*l.* 10s. for every 100*l.*, and so in proportion for any greater or less sum than 100*l.* of such amount or value; provided proof be made by affidavit or affirmation, to the satisfaction of the said commissioners, that such stamps have not been issued; and provided application be made for such allowance within six calendar months next after the passing of this act."

9 *G.* 4. *c.* 24. 19 *June*, 1828.

" An Act to repeal certain Acts, and to consolidate and amend the Laws relating to Bills of Exchange and Promissory Notes in Ireland.

" Whereas it is expedient that the acts relating to bills of exchange and promissory notes in Ireland should be consolidated and amended, so that the law in relation thereto may be assimilated to that of England; and also that the fees payable to notaries public in Ireland, for noting and protesting such bills and notes, should be regulated and defined: be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal and commons in this present parliament assembled, and by the authority of the same, that an act passed in the parliament of Ireland in the eighth year of the reign of Queen Anne, intituled 'An Act for the better Payment of Inland Bills of Exchange, and making Promissory Notes more obligatory;' and also an act passed in the parliament of Ireland in the twenty-sixth year of the reign of King George the Third, to explain and amend the said act of the eighth year of the reign of Queen Anne; and also an act passed in the parliament of the United Kingdom in the first and second years of the reign of his present Majesty, intituled 'An Act to regulate Acceptance of Bills of Exchange;' and also an act passed in the parliament of the United Kingdom in the seventh and eighth years of his present Majesty's reign, intituled 'An Act for declaring the Law in relation to Bills of Exchange

After 1st Sep. 1828, the Irish acts 8 Anne and 26 G. 3. relating to promissory notes, and so much of 1 & 2 G. 4. c. 78. and 7. & 8 G. 4. c. 15. (U.K.) as relate to promissory notes in Ireland, repealed.

and Promissory Notes becoming payable on Good Friday or Christmas Day,' so far as the said two last-mentioned acts or either of them relate to or are in force in Ireland, shall, from and after the first day of September 1828, be, and the same are hereby repealed; except so far as any of the said acts may repeal any former act or acts, and except as to actions or suits heretofore commenced and prosecuted upon any of the said so hereby repealed acts respectively.

Promissory notes may be assignable as bills of exchange.

2. " And be it enacted, that when any note in writing, commonly called a promissory note, shall at any time after the said first day of September 1828, be made and signed by any person or persons, banker or bankers, goldsmith or goldsmiths, merchant or merchants, trader or traders, or by any clerk, servant, or agent usually intrusted by him, her, or them to sign such promissory notes for him, her, or them, whereby the maker or makers of such note doth or do or shall promise to pay any sum of money mentioned therein to any other person or persons, his, her, or their order, or unto bearer, such note shall be taken and construed to be, by virtue thereof, due and payable to the person or persons to whom the same is made payable, or to the bearer thereof respectively; and every such note payable to any person or persons, or to his, her, or their order, shall be assignable or indorsable over in the same manner as inland bills of exchange are or may be according to the custom of merchants; and the person or persons to whom such sum of money is or shall by any such note or indorsement be made payable, or to whom such note shall be indorsed or assigned, or shall be payable, shall and may maintain an action for the same in such manner as he, she, or they might do upon any inland bill of exchange made or drawn according to the custom of merchants, either against the person or persons by whom or by whose servant or agent as aforesaid the same was signed, or against any of the persons having indorsed such assignable or indorsable note, in like manner as in cases of inland bills of exchange; and in every such action the plaintiff or plaintiffs shall recover his, her, or their damages and costs of suit, and if such plaintiff or plaintiffs shall be nonsuited, or a verdict shall be given against him, her, or them, the defendant or defendants shall recover his, her, or their costs against the plaintiff or plaintiffs, and every such plaintiff or plantiffs, defendant or defendants, respectively recovering, may sue out execution for such damages and costs by capias, fieri facias, or elegit.

And the persons to whom they are assigned may maintain actions for the same.

Actions to be brought within the time limited by the statute of limitations.

3. "And be it further enacted, that every such action shall be commenced, sued, and brought within such time as is appointed for commencing or suing actions upon the case, by an act made in the parliament of Ireland in the tenth year of the reign of King Charles the First, intituled 'An Act for Limitations of Actions, and for avoiding of Suits in Law.'

Dishonoured bills above the value of 5*l.* may be protested.

4. "And be it further enacted, that from and after the first day of September 1828, in all cases where any inland bill of exchange or promissory note for the sum of 5 pounds and upwards respectively shall be dishonoured by non-acceptance of such bill, or nonpayment of such bill or note, it shall be lawful for the holder or holders of such bill or note to cause the same to be protested for such non-acceptance or nonpayment, as the case may be, by a notary public, and in default of such notary public, by any other substantial person of the city, town, or place where such bill or note shall be so dishonoured, in the presence of two or more credible witnesses; which protest shall be made and written under a fair written copy of such bill or note, in the form or to the effect following:

Form of protest.

'KNOW all men, that I A. B. on the day of have demanded from the above-named payment of the bill or note [or acceptance of the bill] of which the above is a copy, which the said did not pay, [or accept]: Wherefore I the said do hereby protest the said bill [or note]. Dated at this day of .'

Notice of protest to be given.

Which protest so made as aforesaid shall be sent, or otherwise due notice of such dishonour shall be given, by or on behalf of the party holding or protesting such bill or note, to the party from whom such bill or note was received, and whom it is sought to make chargeable therewith, and such party shall thereupon pay the said bill or note, together with all interest and charges from the day when such bill or note

Expenses of protest.

was protested; and there shall be paid to the notary or other person protesting any such bill or note, a sum of two shillings and sixpence for any bill or note not amounting to twenty pounds, and a sum of four shillings for any bill or note amounting to twenty pounds and upwards, over and above all stamp duty upon such protest, and also of the fee of one shilling, hereinafter provided, for registering and copying such bill; and in case such protest shall be made

and sent, or such due notice of the dishonour of such bill or note shall be given as aforesaid, to any person liable to the payment thereof by reason of such dishonour, the person so receiving such protest or notice, and failing or neglecting to pay the amount of such bill or note so protested or dishonoured, together with the costs of such protest, shall be liable to all costs, damages, and interest which may and shall accrue thereby.

When a bill or note is lost, the drawer to give another, on certain conditions.

5. "And be it further enacted, that in case it shall happen that any bill or note shall be lost or miscarried before the same shall have been presented for acceptance, or within the time limited for payment of the same, then the drawer of such bill, or the maker of such note, shall be obliged to give another bill or note of the same tenor with the bill or note first given, the person or persons to whom the same shall be so delivered giving security, if demanded, to the said drawer or maker, to indemnify him against all persons whomsoever, in case the bill or note so alleged to be lost or miscarried shall be found again.

Bills accepted in satisfaction of any former debt, to be deemed a full payment.

6. "And be it further enacted, that from and after the said first day of September 1828, if any person doth or shall receive any such bill or note, for and in satisfaction of any former debt, or of any sum of money formerly due unto such person, the same shall be accounted and esteemed, at law and in equity, a full and complete payment of such debt, if such person so receiving any such bill or note for his debt shall not use due diligence to obtain payment thereof by endeavouring to get such bill accepted and paid, or such note paid, and also make his protest as aforesaid, either for non-acceptance or nonpayment thereof, or otherwise give due notice of the dishonour thereof as aforesaid; provided that nothing herein contained shall extend to satisfy or discharge any other and different security or remedy that any person using such due diligence as aforesaid may have for the same debt against the drawer, acceptor, or indorser of such bill, or the maker or indorser of such note.

What shall be deemed a general, and what a qualified acceptance.

7. "And be it further enacted, that from and after the first day of September 1828, if any person shall accept a bill of exchange payable at the house of a banker or other person, without further expression in his acceptance, such acceptance shall be deemed and taken to be, to all intents and purposes, a general acceptance of such bill; but if the acceptor shall in his acceptance express that he accepts the bill payable at the house of a banker, or of any other person

only, or not otherwise or elsewhere, such acceptance shall be deemed and taken to be, to all intents and purposes whatsoever, a qualified acceptance of such bill, and the acceptor shall not be liable to pay such bill, except in default of payment when such payment shall have been duly demanded at the time when such bill shall have become payable, and at the house of such banker, or other place where such bill shall have been made payable.

No acceptance of any inland bill of exchange to be good, unless made in writing on the same.

8. " And be it further enacted, that from and after the said first day of September 1828, no acceptance of any inland bill of exchange shall be sufficient to charge any person or persons, unless such acceptance shall have been made in writing upon such bill, or if there be more than one such bill of the same tenor and date, then on one of the said bills.

Bills falling due on Good Friday, Christmas day, and days of fast, to be payable on the day before.

9. " And whereas the bank of Ireland, and banks in general, and other persons in Ireland, are often under the necessity of transacting business on Good Friday, Christmas day, and days appointed by his Majesty's proclamation for solemn fasts or days of thanksgiving, for the purpose of receiving money for foreign and inland bills of exchange and promissory notes becoming payable on those days respectively, in consequence whereof many persons are prevented observing the same with due solemnity: and whereas doubts have existed in Ireland, whether foreign and inland bills of exchange and promissory notes falling due on any Sunday are properly payable on the Saturday next before such Sunday, or on the Monday next after such Sunday: now therefore, for the better observance of Good Friday and Christmas day, and such days of fast and thanksgiving as aforesaid, and also for the removing such doubts as aforesaid, and assimilating the law of Ireland to that of England in such respects, be it enacted, that in all cases where any such bill of exchange or promissory note in Ireland shall fall due on any Sunday, or on any Good Friday, or on any Christmas day, or on any such day of fast or day of thanksgiving, the same shall be payable on the day next preceding such Sunday or such Good Friday, or on the day (not being a Sunday) next preceding such Christmas day or day of fast or day of thanksgiving respectively; and that in case of nonpayment of such bill of exchange or promissory note, the same may be noted and protested on such preceding day as if the same were payable on such day; and that whenever such Christmas day shall

fall on, or such day of fast or day of thanksgiving shall be appointed on a Monday, every such bill of exchange or promissory note, which would be payable on such Christmas day or day of fast or day of thanksgiving, shall be payable on the Saturday preceding such Christmas day or day of fast or day of thanksgiving respectively, and in case of nonpayment, being first duly demanded, may be noted and protested for payment on such preceding Saturday.

In such cases notice of the dishonour thereof not necessary to be given until the day next after such Good Friday, &c.

10. " And be it further enacted, that from and after the 1st day of September, 1828, in cases of bills of exchange and promissory notes falling due on any Sunday, Good Friday, or any Christmas day, or on any day of fast or day of thanksgiving as aforesaid, as well as in the cases of foreign or inland bills of exchange and promissory notes falling due in Ireland on the day preceding any Sunday, or any Good Friday, or any Christmas day, or any such day of fast or day of thanksgiving, it shall not be necessary for the holder or holders of such bills of exchange or promissory notes to give notice of the dishonour thereof until the day next after such Sunday, or Good Friday, or Christmas day, or day of fast or day of thanksgiving; and in case such Christmas day shall fall, or such day of fast or day of thanksgiving shall be appointed on a Saturday, it shall not be necessary for the holder or holders of such bills of exchange or promissory notes to give notice of the dishonour thereof until the Monday next after such Christmas day or day of fast or thanksgiving; and that whensoever such Christmas day shall fall on, or such day of fast or day of thanksgiving shall be appointed on a Monday, it shall not be necessary for the holder or holders of such bills of exchange and promissory notes, as shall either, by virtue of this act or otherwise, be payable on the preceding Saturday, to give notice of the dishonour thereof until the Tuesday next after such Christmas day, or day of fast, or day of thanksgiving, respectively; and that every such notice, so given as aforesaid, shall be valid and effectual to all intents and purposes.

Good Friday, &c. for the purposes of this act, to be considered the same as Sunday.

11. " And be it further enacted, that from and after the said 1st day of September, 1828, Good Friday and Christmas day, and every such day of fast and thanksgiving so appointed by his Majesty, is and shall, for all other purposes whatsoever, as regards bills of exchange and promissory notes, be treated and considered in Ireland as the Lord's day, commonly called Sunday.

Notaries public need not attend to accept bills after nine o'clock in the evening.

12. "And whereas it is the usage and custom in Ireland for bankers and banking companies, and merchants, and other persons having offices of business, to attend therein daily until the hour of six of the clock in the afternoon, for the purpose of receiving payment (should the same be offered) of such foreign or inland bills of exchange or promissory notes whereof they are the holders, as had been presented for payment at some earlier hour of the day upon which the same became payable, and which had not then been paid upon such presentment; and in such cases the holder of such bills of exchange and promissory notes, when such bills of exchange and promissory notes are not paid at or before the said hour of six of the clock on the said day of payment, have been used to send the same to a notary public, in order that the same may be by him again presented for payment, and in case of nonpayment noted for protest: and whereas doubts have existed whether the acceptors of bills of exchange, and the makers of promissory notes, have not by law till the last instant of the day upon which the same respectively may become due to pay the same; and by reason of such doubts notaries public in Ireland have been required, at late and unseasonable hours of the night, to receive payment of such bills or notes as may at some previous hour of the same day have been presented for payment as aforesaid: and whereas it is expedient that such doubts should be removed, and that the said inconvenient practice occasioned thereby should be discontinued; be it therefore enacted, that from and after the 1st day of September, 1828, in any case where any notary public in Ireland shall present any bill of exchange, whether foreign or inland, or promissory note, for payment thereof as aforesaid, and payment of the same shall not be made at or before the hour of nine of the clock in the afternoon of the day of such presentment, it shall not be necessary for such notary public, or any person for him, at his house or office, to be in attendance after such hour of nine of the clock, in order to receive payment of the same; but every such bill or note as aforesaid, whereof payment shall not be made, or duly and legally tendered, at or before such hour of nine of the clock, shall be considered to be and shall be dishonoured to all intents and purposes, and thereupon such notary public shall and may note or protest the same for nonpayment; any law, statute, or usage to the contrary in anywise notwithstanding.

13. "And whereas it would be productive of great benefit to the holders of foreign and inland bills of exchange and promissory notes, to cause the same to be presented by a notary public, and (if necessary) noted for non-acceptance or nonpayment, either with a view to a future protest or otherwise, or whether such bills or notes may have been previously presented for acceptance or payment by such holders thereof, or otherwise; and also that such notary shall fairly and truly register and copy such bill of exchange or promissory note as he may so present; and it is therefore expedient to regulate the charges which such notary public may lawfully make, in relation to such noting, presentment, registering, and copying; be it therefore enacted, that from and after the 1st day of September, 1828, whenever any bill of exchange or promissory note shall be sent or delivered to any notary public in Ireland, for any of the purposes aforesaid, the same shall be by him forthwith registered and copied in a book to be kept by him for that purpose; and for which registering and copying he shall be entitled and is hereby authorised to make a charge of one shilling, whether such bill shall be afterwards noted or protested or not; and such notary shall be further entitled to make an additional charge of one shilling and sixpence for presenting or causing to be presented any such bill or note for payment or acceptance (as the case may be); and such notary shall be further entitled to make an additional charge of one shilling and sixpence for noting every such bill or note, when the same shall be dishonoured for non-acceptance or nonpayment, as the case may be; provided the place where such presentment shall be made shall be within the limits or within the bounds of any city or town in Ireland; provided always, that every such charge as such notary pnblic shall be so entitled to make as aforesaid, shall in all cases be paid and payable to such notary by the holder or holders of such bills or notes; and every such holder shall be entitled and is hereby authorised to recover over, from the acceptor of any such bill of exchange, or maker of any such promissory note, or other party or parties liable to such holder upon such bill or note, the full amount of such notary's charge as aforesaid, for registering and copying the same in his books as aforesaid, in case such bill or note shall, previously to its being sent or delivered to such notary for the purpose aforesaid, have been duly presented for acceptance or payment, and if same be pay-

Notaries public, upon receiving bills, to enter and register the same in a book, to be open to inspection.

Charges for registering, &c.

Holders of bills may recover the amount of such charges from the acceptors.

able, shall not have been paid, or the amount thereof duly and legally tendered, or in case the same, though it may not have been so previously presented and dishonoured, shall not, upon being duly presented by such notary, be duly honoured by acceptance or payment thereof, as the case may be; and every such holder shall be further entitled and is hereby authorised to recover over, from such acceptor or maker of such bill or note, or other party or parties thereto, being liable thereon to such holder as aforesaid, the full amount of such notary's said charge for presenting or noting the same, in case the same shall not, upon being so duly presented by such notary as aforesaid, be duly honoured by acceptance or payment thereof, as the case may be: provided also, that such holder shall be entitled and is hereby authorised to recover over, in like manner, from such acceptor or maker of such bill or note, or other party or parties thereto, as last aforesaid, the full amount of such notary's charge for presenting the same, in case (notwithstanding such acceptance or payment thereof, upon such presentment by such notary as aforesaid) the same had been previously thereto duly presented to such acceptor or maker for acceptance or payment thereof, and such acceptance or payment had not been made: provided also, that in all cases where the holder of such bill or note shall be entitled, under the aforesaid provisions of this act, to recover from the acceptor or maker of such bill or note, or other party or parties thereto, such notary's charge for registering and copying in his books, or presenting the same for payment, or noting the same as aforesaid, it shall be lawful for such notary, at the time of presenting such bill or note for the payment thereof, to demand from the acceptor or maker thereof, or the person paying the same, the full amount of such charge or charges, over and above the sum specified in such bill or note; and in case such acceptor or maker shall, on such demand, refuse to pay such notary the full amount of such charge or charges, it shall and may be lawful for such notary to refuse to receive payment of the sum specified in such bill or note, or the acceptance of such bill, notwithstanding that the same may be tendered; but every such bill or note shall, by reason of such refusal to pay such charge or charges as aforesaid, be deemed to be and shall be dishonoured, to all intents and purposes whatsoever.

Notary may demand the amount of charges from the acceptor or maker of the bill, and if not paid may refuse to receive payment of the bill.

14. "And be it further enacted, that from and after the said 1st day of September, 1828, every such notary public, or other person as aforesaid, shall be entitled to a sum of four shillings for protesting any foreign bill of exchange, over and above all stamp duty payable upon such protest, and also over and besides the sum of one shilling for registering and copying such bill, as hereinbefore provided. Sums allowed for protesting bills.

15. "And be it enacted, that all public notaries practising in the city of Dublin shall keep a public office in some known and convenient street or place in the said city, on which the name of such notary and his profession shall be set forth in legible characters; and that the said notaries shall keep their offices open from six of the clock in the afternoon until nine of the clock in the evening of every day (Sunday, Good Friday, Christmas day, and days of fast and days of thanksgiving as aforesaid excepted). Notaries practising in Dublin to keep a public office.

16. "And it is hereby further declared and enacted, that all places within the city or county of Dublin over which the jurisdiction of the commissioners for paving, cleansing, and lighting the city of Dublin, commonly called the paving board, extends, pursuant to an act passed in the 47th year of his late majesty George the Third, intituled 'An Act for the more effectual improvement of the city of Dublin and the environs thereof,' shall be deemed and taken to be for the purposes of this act within the bounds or limits of the said city of Dublin. Limits of Dublin for the purpose of this act.

17. "Provided always, and be it enacted, that nothing in this act contained shall be construed to repeal or alter the provisions of any act relating to bills of exchange or promissory notes now in force in Ireland, saving so far as the same are repealed or altered by the express provisions of this act." Act not to repeal former acts, except so far as is provided.

9 *G.* 4. *c.* 32. *s.* 11. 1828.

"On any prosecution by indictment or information, either at common law or by virtue of any statute, against any person for forging any deed, writing, instrument, or other matter whatsoever, or for uttering or disposing of any deed, writing, instrument, or other matter whatsoever, knowing the same to be forged, or for being accessory before or after the fact to any such offence, if the same be a felony, or for aiding, abetting, or counselling the com- The party whose name is forged shall be a competent witness in prosecutions for forgery.

mission of any such offence, if the same be a misdemeanour, no person shall be deemed to be an incompetent witness in support of any such prosecution, by reason of any interest which such person may have or be supposed to have in respect of such deed, writing, instrument, or other matter."

BANKERS' CHECKS.

9 *G.* 4. *c.* 49. *s.* 15. 1828.

"And be it, &c. All drafts or orders for the payment of any sum of money to the bearer on demand, and drawn in any part of Great Britain upon any banker or bankers, or any person or persons acting as a banker, who shall reside or transact the business of a banker, within fifteen miles of the place where such drafts or orders shall be issued, shall be and the same are hereby exempted from any stamp duty imposed by any act or acts in force immediately before the passing of this act, anything in any such act or acts to the contrary notwithstanding, provided the place where such drafts or orders shall be issued shall be specified therein, and provided the same shall bear date on or before the day on which the same shall be issued, and provided the same shall not direct the payment to be made by bills or promissory notes."

9 *G.* 4. *c.* 71. 1828.

"An Act for making Promissory Notes payable issued by Banks, Banking Companies, or Bankers in Ireland, at the Places where they are issued."

2 & 3 *W.* 4. *c.* 98. 1832.

"An Act for regulating the Protesting for Nonpayment of Bills of Exchange, drawn payable at a Place not being the Place of the Residence of the Drawee or Drawees of the same.

"Whereas doubts having arisen as to the place in which it is requisite to protest for nonpayment bills of exchange which on the presentment for acceptance to the drawee or drawees shall not have been accepted; such bills of exchange being made payable at a place other than the place mentioned therein to be the residence of the drawee or drawees thereof, and it is expedient to remove such doubts;

be it therefore enacted, &c., that from and after the passing of this act all bills of exchange, wherein the drawer or drawers thereof shall have expressed that such bills of exchange are to be payable in any place, other than the place by him or them therein mentioned to be the residence of the drawee or drawees thereof, and which shall not on the presentment for acceptance thereof be accepted, shall or may be without further presentment to the drawee or drawees, protested for nonpayment, in the place in which such bills of exchange shall have been by the drawer or drawers expressed to be payable, unless the amount owing upon such bills of exchange shall have been paid to the holder or holders thereof on the day on which such bills of exchange would have become payable, had the same been duly accepted."

Bills of exchange expressed to be paid in any place other than the residence of drawee, if not accepted, no presentment may be protested in that place, unless amount paid to the holder

This act was passed principally through the doubts which were publicly expressed in the case of Mitchell *v.* Baring (1829), 10 B. & C. 4. 4 C. & B. 35. In which case the acceptor for honour resided in London, and the drawee in Liverpool; and much contradictory evidence was given as to the custom of merchants. The law in this respect was still further declared in 1836, by the 6 & 7 W. 4. c. 58.

3 & 4 *W.* 4. *c.* 98. 1833.

" An Act for giving to the Corporation of the Governor and Company of the Bank of England certain privileges for a limited period, under certain conditions.

Sect. 2. " And be it further enacted, that during the continuance of the said privilege, no body politic or corporate, and no society or company, or persons united or to be united in partnerships exceeding six persons, shall make or issue in London, or within sixty miles thereof, any bill of exchange or promissory note, or engagement for the payment of money on demand, or upon which any person holding the same may obtain payment on demand: provided always, that nothing herein or in the said recited act of the 7 G. 4. contained, shall be construed to prevent any body politic or corporate, or any society or company or corporation or copartnership carrying on and transacting banking business at any greater distance than sixty-five miles from London, and not having any house of business or establishment as bankers in London, or within sixty-five miles thereof (except as hereinafter mentioned), to make

During such privilege no banking company of more than six persons to issue notes payable on demand within London, or sixty-five miles thereof.

and issue their bills and notes payable on demand or otherwise at the place at which the same shall be issued, being more than sixty-five miles from London, and also in London, and to have an agent or agents in London or at any other place at which such bills or notes shall be made payable for the purpose of payment *only*; but no such bill or note shall be for any sum less than 5*l*., or be reissued in London, or within sixty-five miles thereof."

Any company or partnership may carry on business of banking in London or within 65 miles thereof, upon the terms herein mentioned.

Sect. 3. provides that any company of more or less than six persons may carry on the business of bankers in London, or within sixty-five miles thereof, "provided that such body politic or corporate, or society, or company, or copartnership, do not borrow, owe, or take up in England, any sum or sums of money on their bills or notes payable on demand, or at any less time than six months from the borrowing thereof, during the continuance of the privileges granted by this act to the said governor and company of the bank of England."

Sect. 4. provides that all notes of the Bank of England payable on demand, which shall be issued out of London, shall be payable at the place where issued.

Bank notes to be a legal tender, except at the bank and branch banks.

Sect. 5. enacts that a tender of a note or notes of the governor and company of the Bank of England, expressed to be payable to bearer on demand, shall be a legal tender to the amount expressed in such note or notes, and shall be taken to be valid as a tender to such amount for all sums above five pounds on all occasions on which any tender of money may be legally made, so long as the Bank of England shall continue to pay on demand their said notes in legal coin: provided always, that no such note or notes shall be deemed a legal tender of payment by the governor and company of the bank of England, or any branch bank of the said governor and company; but the said governor and company are not to become liable or be required to pay and satisfy at any branch bank of the said governor and company any note or notes of the said governor and company, not made specially payable at such branch bank; but the said governor and company shall be liable to pay and satisfy at the bank of England in London, all notes of the said governor and company or of any branch thereof.

Bills not having more than three months to run not subject to usury laws.

Sect. 7. "And be it further enacted, that no bill of exchange or promissory note made payable at or within three months after the date thereof, or not having more than three months to run shall by reason of any interest taken thereon

or secured thereby, or any agreement to pay or receive or allow interest in discounting, negotiating, or transferring the same, be void, nor shall the liability of any party to any bill of exchange or promissory note be affected by reason of any statute or law in force for the prevention of usury; nor shall any person or persons drawing, accepting, indorsing, or signing any such bill or note, or lending or advancing any money or taking more than the present rate of legal interest in Great Britain and Ireland respectively for the loan of money, or any such bill or note, be subject to any penalties under any statute or law relating to usury, or any other penalty or forfeiture, any thing in any law or statute relating to usury in any part of the United Kingdom to the contrary notwithstanding."

By sect. 2. & 3. of this act it is illegal for any joint stock bank in London to issue either their own notes or to accept bills. Bank of England *v.* Anderson (1837), 3 Bingham, N. C. 667.

And by sect. 7. the usury laws no longer extend to any promissory note not of longer date than three months, or to any bond given to secure payment of it. Connop *v.* Meaks (1834), 2 Adolph. & E. 326. But if any goods are given as a security for the payment of a bill, this clause does not protect the goods from being recovered in an action of trover. Hargreaves *v.* Hutchinson (1834), 2 Adolph. & E. 12.

1835. *5 & 6 W. 4. c. 41.*

"An Act to amend the Law relating to Securities given for Considerations arising out of gaming, usurious, and certain other illegal transactions.

"Whereas by an act passed in the sixteenth year of the reign of his late Majesty King Charles the Second, and by an act passed in the parliament of Ireland in the tenth year of the reign of his late Majesty King William the Third, each of such acts being intituled 'An Act against deceitful, disorderly, and excessive Gaming,' it was enacted, that all and singular judgments, statutes, recognizances, mortgages, conveyances, assurances, bonds, bills, specialties, promises, covenants, agreements, and other acts, deeds, and securities whatsoever, which should be obtained, made, given, acknowledged, or entered into for security or satisfaction of or for any money or thing lost at play or otherwise as in

16 Car. 2. c. 7.
10 Will. 3. (I.)

the said acts respectively is mentioned, or for any part thereof, should be utterly void and of none effect: and
9 Ann. c. 14. whereas by an act passed in the ninth year of the reign of her late Majesty Queen Anne, and also by an act passed in
11 Ann. (I.) the parliament of Ireland in the eleventh year of the reign of her said late Majesty, each of such acts being intituled 'An Act for the better preventing of excessive and deceitful Gaming,' it was enacted, that from and after the several days therein respectively mentioned all notes, bills, bonds, judgments, mortgages, or other securities or conveyances whatsoever, given, granted, drawn, or entered into or executed by any person or persons whatsoever, where the whole or any part of the consideration of such conveyances or securities should be for any money or other valuable thing whatsoever won by gaming or playing at cards, dice, tables, tennis, bowls, or other game or game whatsoever, or by betting on the sides or hands of such as did game at any of the games aforesaid, or for the reimbursing or repaying any money knowingly lent or advanced for such gaming or betting as aforesaid, or lent or advanced at the time and place of such play to any person or persons so gaming or betting as aforesaid, or that should, during such play, so play or bet, should be utterly void, frustrate, and of none effect, to all intents and purposes whatsoever; and that where such mortgages, securities, or other conveyances should be of lands, tenements, or hereditaments, or should be such as should incumber or affect the same, such mortgages, securities, or other conveyances should enure and be to and for the sole use and benefit of and should devolve upon such person or persons as should or might have or be entitled to such lands or hereditaments in case the said grantor or grantors thereof, or the person or persons so incumbering the same, had been naturally dead, and as if such mortgages, securities, or other conveyances had been made to such person or persons so to be entitled after the decease of the person or persons so incumbering the same; and that all grants or conveyances to be made for the preventing of such lands, tenements, or hereditaments from coming to or devolving upon such person or persons thereby intended to enjoy the same as aforesaid, should be deemed fraudulent and void and of none effect, to all intents and purposes whatsoever:
12 Ann. st. 2. c. 16. and whereas by an act passed in the twelfth year of the reign of her said late Majesty Queen Anne, intituled 'An Act to reduce the Rate of Interest without any Prejudice

to Parliamentary Securities,' it was enacted, that all bonds, contracts, and assurances whatsoever, made after the 29th day of September, 1714, for payment of any principal or money to be lent or covenanted to be performed upon or for any usury, whereupon or whereby there should be reserved or taken above the rate of five pounds in the hundred, as therein mentioned, should be utterly void: and whereas by an act passed in the parliament of Ireland in the fifth year of the reign of his late Majesty King George the Second, intituled 'An Act for reducing the Interest of Money to Six per Cent.,' it was enacted, that all bonds, contracts, and assurances whatsoever made after the 1st day of May, 1732, for payment of any principal or money to be lent or covenant to be performed upon or for any loan, whereupon or whereby there should be taken or reserved above the rate of six pounds in the hundred, should be utterly void: and whereas by an act passed in the fifty-eighth year of the reign of his late Majesty King George the Third, intituled 'An Act to afford Relief to the bonâ fide Holders of negotiable Securities without Notice that they were given for a usurious Consideration," it was enacted, that no bill of exchange or promissory note that should be drawn or made after the passing of that act should, though it might have been given for a usurious consideration or upon a usurious contract, be void in the hands of an indorsee for valuable consideration, unless such indorsee had at the time of discounting or paying such consideration for the same actual notice that such bill of exchange or promissory note had been originally given for a usurious consideration or upon a usurious contract: and whereas by an act passed in the parliament of Ireland in the eleventh and twelfth years of the reign of his said late Majesty King George the Third, intituled 'An Act to prevent Frauds committed by Bankrupts,' it was enacted, that every bond, bill, note, contract, agreement, or other security whatsoever, to be made or given by any bankrupt, or by any other person, unto or to the use of or in trust for any creditor or creditors, or for the security of the payment of any debt or sum of money due from such bankrupt at the time of his becoming bankrupt, or any part thereof, between the time of his becoming bankrupt and such bankrupt's discharge, as a consideration or to the intent to persuade him, her, or them to consent to or sign any such allowance or certificate, should be wholly void and of no effect, and the monies

5 G. 2. (I.)

58 G. 3. c. 93.

11 & 12 G. 3. (I.)

there secured or agreed to be paid should not be recovered or recoverable: and whereas by an act passed in the forty-fifth year of the reign of his said late Majesty
45 G. 3. c. 72. King George the Third, intituled 'An Act for the Encouragement of Seamen, and for the better and more effectually manning his Majesty's Navy during the present War,' it was enacted, that all contracts and agreements which should be entered into, and all bills, notes, and other securities which should be given, by any person or persons for ransom of any ship or vessel, or of any merchandise or goods on board the same, contrary to that act, should be absolutely null and void in law, and of no effect whatsoever: and whereas by an act passed in the sixth year of the reign of his late Majesty King George the Fourth, intituled
6 G. 4. c. 16. 'An Act to amend the Laws relating to Bankrupts,' it was enacted, that any contract or security made or given by any bankrupt or other person unto or in trust for any creditor, or for securing the payment of any money due by such bankrupt, at his bankruptcy, as a consideration or with intent to persuade such creditor to consent to or sign the certificate of any such bankrupt, should be void, and the money thereby secured or agreed to be paid should not be recoverable, and the party sued on such contract or security might plead the general issue, and give that act and the special matter in evidence: and whereas securities and instruments made void by virtue of the several hereinbefore recited acts of the 16th year of the reign of his said late Majesty King Charles the Second, the 10th year of the reign of his said late Majesty King William the Third, the 9th and 11th years of the reign of her said late Majesty Queen Anne, the 11th and 12th years of the reign of his said late Majesty King George the Third, the 45th year of the reign of his said late Majesty King George the Third, and the 6th year of the reign of his said late Majesty King George the Fourth, and securities and instruments made void by virtue of the said act of the 12th year of the reign of her said late Majesty Queen Anne, and the 5th year of the reign of his said late Majesty King George the Second, other than bills of exchange or promissory notes made valid by the said act of the 58th year of the reign of his said late Majesty King George the Third, are sometimes indorsed, transferred, assigned, or conveyed to purchasers or other persons for a valuable consideration, without notice of the original con-

sideration for which such securities or instruments were given; and the avoidance of such securities or instruments in the hands of such purchasers or other persons is often attended with great hardship and injustice: For remedy thereof be it enacted by the king's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal and commons in this present parliament assembled, and by the authority of the same, that so much of the hereinbefore recited acts of the 16th year of the reign of his said late Majesty King Charles the Second, the 10th year of the reign of his said late Majesty King William the Third. the 9th, 11th, and 12th years of the reign of her said late Majesty Queen Anne, the 5th year of the reign of his said late Majesty King George the Second, the 11th and 12th and the 45th years of the reign of his said late Majesty King George the Third, and the sixth year of the reign of his said late Majesty King George the Fourth, as enacts that any note, bill, or mortgage shall be absolutely void, shall be and the same is hereby repealed; but nevertheless every note, bill, or mortgage which if this act had not been passed would, by virtue of the said several lastly hereinbefore mentioned acts, or any of them, have been absolutely void, shall be deemed and taken to have been made, drawn, accepted, given, or executed for an illegal consideration, and the said several acts shall have the same force and effect which they would respectively have had, if, instead of enacting that any such note, bill, or mortgage should be absolutely void, such acts had respectively provided that every such note, bill, or mortgage should be deemed and taken to have been made, drawn, accepted, given, or executed for an illegal consideration: provided always, that nothing herein contained shall prejudice or affect any note, bill, or mortgage which would have been good and valid if this act had not been passed.

Securities given for considerations arising out of illegal transactions not to be void, but to be deemed to have been for an illegal consideration

2. " And be it further enacted, that in case any person shall, after the passing of this act, make, draw, give, or execute any note, bill, or mortgage, for any consideration on account of which the same is by the hereinbefore recited acts of the sixteenth year of the reign of his said late Majesty King Charles the Second, the tenth year of the reign of his said late Majesty King William the Third, and the ninth and eleventh years of the reign of her said late Majesty Queen Anne, or by any one or more of such acts, declared to be void, and such person shall actually pay to

Money paid to the holder of such securities shall be deemed to be paid on account of the person to whom the same was originally given.

any indorsee, holder, or assignee of such note, bill, or mortgage the amount of the money thereby secured, or any part thereof, such money so paid shall be deemed and taken to have been paid for and on account of the person to whom such note, bill, or mortgage was originally given upon such illegal consideration as aforesaid, and shall be deemed and taken to be a debt due and owing from such last-named person to the person who shall so have paid such money, and shall accordingly be recoverable by action at law in any of his Majesty's courts of record.

Repealing so much of recited acts of 9 & 11 Anne as enacts that securities shall enure for the benefit of parties in remainder.

3. "And be it further enacted, That so much of the said acts of the ninth and eleventh years of the reign of her said late Majesty Queen Anne as enacts that where such mortgages, securities, or other conveyances as therein mentioned should be of lands, tenements, or hereditaments, or should be such as should incumber or affect the same, such mortgages, securities, or other conveyances should enure and be to and for the sole use and benefit of, and should devolve upon such person or persons as should or might have or be entitled to such lands or hereditaments in case the grantor or grantors thereof, or the person or persons incumbering the same, had been naturally dead, and as if such mortgages, securities, or other conveyances had been made to such person or person so to be entitled after the decease of the person or persons so incumbering the same, and that all grants or conveyances to be made for the preventing of such lands, tenements, or hereditaments, from coming to or devolving upon such person or persons thereby intended to enjoy the same as aforesaid, should be deemed fraudulent and void and of none effect, to all intents and purposes whatsoever, shall be and the same is hereby repealed; saving to all persons all rights acquired by virtue thereof previously to the passing of this act."

This most excellent act is fraught with the true enlightened spirit of commercial legislation, and relieves the innocent holder in several hard cases. It perhaps carries the principle that a bonâ fide holder should not be liable for any latent defects of a bill of exchange as far as possible, for he is now almost only liable in the case of one materially altered to get possession of a bill which is utterly void; and I do not see how, consistently with the safety of the revenue, this can be avoided; but it is a contingency not very usual in commerce. By this act, therefore, a bill of exchange which, for the reasons I have given at p. 12, would have

been void, if founded in a gambling transaction, usury, signing bankrupt's certificate, insolvent debtor's petition, &c., is now only void between the parties, but it is good in the hands of an innocent indorsee. Yet the condition of the criminal parties is very slightly improved, since the acceptor or other person who is the defrauded or oppressed party can, under sec. 2., recover the amount by an action for money had and received, to which there could be no easy defence; the makers of such bills, are now left very properly to settle the fraud between themselves — an arrangement with which an innocent indorsee can have no concern.

6 & 7 *W.* 4. *c.* 58. 1836.

" An Act for declaring the Law as to the Day on which it is requisite to present for Payment to the Acceptor or Acceptors supra protest for Honour, or to the Referees or Referee in case of need, Bills of Exchange which have been dishonoured.

Bills of exchange need not be presented to acceptors for honour, or referees, till the day following the day on which they become due.

" Whereas bills of exchange are occasionally accepted supra protest for honour, or have a reference therein in case of need, and whereas doubts have arisen when bills have been protested for want of payment as to the day on which they should be presented for payment by the acceptor or acceptors for honour, or to the referee or referees, and it is expedient that such doubts should be removed; be it therefore enacted, &c. That it shall not be necessary to present such bills of exchange to such acceptor or acceptors for honour, or to such referee or referees, until the day following the day on which such bills of exchange shall become due, and that if the place of address on such bills of exchange of such acceptor or acceptors for honour, or such referee or referees, shall be in any city, town, or place other than in the city, town, or place where such bill shall be therein made payable, then it shall not be necessary to forward such bill of exchange for presentment for payment to such acceptor or acceptors for honour, or referees or referee, until the day following the day on which such bill of exchange shall become due.

If the following day be a Sunday, &c., then on the day following such Sunday, &c.

2. " And be it, &c. That if the day following the day on which such bill of exchange shall become due shall happen to be a Sunday, Good Friday, or Christmas day, or a day appointed by his Majesty's proclamation for solemn fast or of thanksgiving, then it shall not be necessary that such

bill of exchange shall be presented for payment to such acceptor or acceptors for honour, or referees or referee, until the day following such Sunday, Good Friday, Christmas-day, or solemn fast, or day of thanksgiving."

This, the last act of parliament relating to bills of exchange, is also a considerable improvement; it decides some points which were mooted in Mitchell *v.* Baring (1829), 10 B. & C. 4., and may be considered as a material addition to the enactments of the 2 & 3 W. 4. c. 98.

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company. Holmes *v.* Higgins, 2 D. & R. 196. 1 B. & C. 74. Neale *v.* Turton, 12 Moore, 365. 4 Bingham, 149. Teague *v.* Hubbard, 2 M. & R. 369. 8 B. & C. 345. Perring *v.* Hone, 2 C. & P. 401. If a private act gives a company power to sue, "by action of debt or on the case," assumpsit will lie. Corbet *v.* Carpmael, 2 N. & M. 834. See also London Gas Light Co. *v.* Nicholls, 2 C. & P. 365. By the 7 G. 4. c. 46., public companies of bankers may be established more than 65 miles from London, of any number of partners, under certain regulations; it empowers them to sue and be sued by their public officers, provided the names of their firm are entered at the stamp office. Armitage *v.* Hamer, 3 B. & Adol. 793. It is a question of law whether the defendant member of a joint stock concern is a partner. Fox *v.* Clifton, 2 M. & Scott, 146. 9 Bingham, 115. Plaintiff must show that the party had authority to bind the defendant by signing the bill. Dickenson *v.* Valpy, 10 B. & C. 128. 5 M. & R. 126.

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CROSSING CHECKS. It is very usual for the drawers of checks to write across them the name of the payee's banker, in which case the banker on whom the check is drawn will only pay to that banker: in other cases, as when the drawer is unaware of the payee's banker, it is usual for him to write merely the words "and Co.," leaving it to the payee to add the name of his banker, this serves the purpose of some security in case the check is lost, since it can only be paid through a banker, and moreover postpones in some measure the payment until the clearing hours in the afternoon; but the holder may erase the name of the banker, or even substitute another if he pleases, and it does not insure its correct appropriation to any particular purpose. Stewart *v.* Lee, 1 M. & M. 158.
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not give a right of action against the testator's effects. Gibson *v.* Minet, 1 Hen. Black, 622. King *v.* Thom. 1 T. R. 487. Buller J.: "If they indorse it at all, they are personally liable, 'and not as executors;' but they are not liable if a banker fails with some of the testator's bills in his hands." Robinson *v.* Ward, 2 C. & P. 59. Rowth *v.* Howell, 3 Vesey, 565. Knight *v.* Lord Plymouth, 3 Atkins, 480. Or if they jointly and severally accept a bill for a creditor of the testators, they are certainly personally liable. Child *v.* Monins, 5 Moore, 282. 2 B. & B. 460. If a bill is given to A. in consideration of future services, and A. dies before he can perform them, the bill is void. Solly *v.* Bird, 6 C. & P. 316. 2 C. & M. 516. If the drawer dies after having advised the drawee of a bill to accept, such drawee may accept, pay, and retain any goods in his possession for his own indemnification. Hammond *v.* Barclay, 2 East, 227. Tate *v.* Hibbert, 2 Vesey Jun. 115. A banker should not pay a check after the death of his customer, ibid.

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It is certain, that in addition to the discount, a banker or broker may charge commission, and that the reasonableness of the amount is a question for the jury. Carstairs *v.* Stein, 4 M. & S. 195. Barclay *v.* Walmsley, 4 East, 55. It was decided in Dagnall *v.* Wright, 11 East, 43., that ten shillings per cent. is an excessive brokerage. A discounter could not oblige the holder to take goods overcharged in part payment, without usury. Davis *v.* Hardacre, 2 Campbell, 375.
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If on the back of a bill payable to A., a party write "received for A.," it is not a forgery under the statute of the 1 W. 4. c. 66. Rex *v.* Arscott, 6 C. & P. 403. It is a forgery to write the name of any one as an acceptor, although fraud was not intended. Rex *v.* Forbes, 7 C. & P. 224. To give a forged note to an engraver is not an uttering. Rex *v.* Harris, 7 C. & P. 416. The supposed indorser of a forged bill is incompetent to prove the indorsement; and when the prisoner has indorsed the bill, and given it to the prosecutor, a release to the indorser does not render him a competent witness, since the property of the bill still remains with the prisoner. Rex *v.* Young, Peake's Add. C. 228. Sewing impressions of forged notes to the parchment on which the indictment is written, is not a legal method of setting out forged notes. Rex *v.* Harris, 7 C. & P. 429. It is a forgery if it is signed with a wrong christian name to the person whose name is forged. Rex *v.* Fitzgerald, 1 Leach, C. C. 20. It is not a forgery for a person who has laid aside his real name to reassume it for the purposes of fraud. Rex *v.* Aickles, 1 Leach, C. C. 438. But it is a forgery if a name is assumed for the purpose of

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a fraud. Rex *v.* Francis, R. & R. C.C. 209. But it would not be but for the fraud. Rex *v.* Bontien, R. & R. C. C. 260. And it is immaterial whether by the forgery any additional credit is given to the bills. Rex *v.* Marshall, R. & R. C. C. 75. In a forgery there need not be an exact resemblance; it is sufficient if it is primâ facie fitted to pass for a true instrument. Rex *v.* Elliott, 1 Leach, C. C. 175. And it is equally a forgery to make the mark of another person with an intent to defraud the person whose name is assumed. Rex *v.* Dunn, 1 Leach, C.C. 57. But to obtain money intended for T. Story by signing his own name T. Story was not held a forgery. Rex *v.* Story, R. & R. C. C. 775. Forging each a part of a bank note is a forgery of the whole by a party, although the parties may not be all together at the time. Rex *v.* Bingley, R. & R. C. C. 446. Rex *v.* Kirkwood, M. C. C. R. 304. Rex *v.* Dade, M. C. C. R. 307. And the note need not be uttered, or attempted to be uttered. Rex *v.* Crocker, 2 N. R. 87. In producing a copy of a lost receipt, to add to it the words "in full of all demands" is a forgery, if offered in evidence. Upfold *v.* Leit, 5 Espinasse, 100. It is a forgery to alter the place of payment on a note, if it is done to give greater currency to it. Rex *v.* Treble, 2 Taunton, 328. Altering the word "one" into "ten" is a forgery. Rex *v.* Post, R. & R. C.C. 101. A forged note must have a signature. Rex *v.* Pateman, R. & R. C. C. 455. A forged promissory note need not be on a stamp. Rex *v* Morton, 2 East, P. C. 955. To wilfully utter is a capital felony. Rex *v.* Reculist, 2 Leach, C. C. 703. And it need not be a negotiable note. Rex *v.* Box, R. & R. C.C. 300. 6 Taunton, 325. But it must be payable in money. Rex *v.* Burke, R. & R. C.C. 496. And there must be a payee's name on it. Rex *v.* Randal, R. & R. C. C. 195. Rex *v.* Richard, id. 193. An order for payment must also be addressed to some person, to be an order for the payment of money. Rex *v.* Ravenscroft, R. & R. C. C. 161. Or goods. Rex *v.* Cullen, 5 C. & P. 116. It is a forgery of check if no person keeps cash at the bank of the same name. Rex *v.* Lockett, 1 Leach, C. C. 94.

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In case a bill, note, or other negotiable security, is stolen, and it gets into the hands of a bonâ fide holder for value, the loser cannot recover it of him; to prevent this transfer, therefore, is all that can be done, and to this end a written or printed notice, containing full particulars of the lost securities, — amount, dates, names of parties, time of loss, description of the supposed thieves, &c. — should be sent to all parties to the bills or notes, the Bank of England, as many private bankers as possible, police offices, inserted in the Hue and Cry police paper, in the principal London papers, &c.; and placards, hand-bills, &c. distributed in all places where it is probable that the securities may be paid away by the robbers, both in this country and abroad. The courts, by requiring caution in

NOTICE OF STOLEN NOTE (*continued*).
taking bills or notes of strangers, throw every reasonable impediment in the way of the negotiation of stolen securities. (See p. 38.) In the case of Bridger *v.* Heath, the following public notice was used (Chitty on Bills, 284.): —
"Twenty-five Guineas Reward. — Lost or stolen from the person of a gentleman, at the Russell-street entrance into the Pit of Drury-lane Theatre, on Monday night last, a Bank of England note, value 200*l.*, numbered 7071., and dated 3d February, 1827. When lost, it was divided into halves. Whoever will bring the same to if lost, or if stolen, will give such information as shall lead to a conviction of the offenders, shall receive the above reward."
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RIGHT TO BEGIN is usually with the plaintiff in an action on a bill of exchange, and if a party has a strong case, it is, generally, a desirable right; but if his cause is weak, and he is desirous of trusting to either the failure of his opponent's proofs, or to the effect of the reply of his own counsel, then the last word is of course desirable. This should, therefore, be carefully borne in mind in the pleadings: an inattention to this is sometimes fatal to the defendant, as in Edwards *v.* Jones (1837), 7 C. & P.; in which case (that of an indorsee against the maker), the defendant pleaded a lengthy plea, amounting to no consideration, to which the replication to a portion was, a good consideration given, and a nolle prosequi as to the remainder. Alderson, B. ruled that the defendant should begin, on which his counsel was obliged to admit that he had no witnesses. The rule adopted by the courts seems to be that laid down by Lord Tenterden, in Fowler *v.* Coster (1828), M. & M. 241., which was an action of an indorsee against an acceptor, to which there was pleaded, a joint acceptance. "Whenever it appears on the record, or by the statement of the counsel engaged, that there is really no dispute about the sum to be recovered, but the damages are either nominal or else mere matter of computation; then, if the affirmative of the issue is on the defendant, he is entitled to begin." See also Homan *v.* Tompson, 6 C. & P. 717. Smart *v.* Rayner, 6 C. & P. 721. Mills *v.* Oddy, 6 C. & P. 728. Faith *v.* M'Intyre, 7 C. & P. 44.; and Best "upon the right to begin and the right to reply," a very useful and carefully written little work.
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THE END.

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